

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Thomas Hart

January 11, 2024



PRI COURT
REPORTING

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LIFESTYLE COMMUNITIES,)
LTD., ET AL.,)
)
 Plaintiffs,)
)
 vs.)
)
CITY OF WORTHINGTON,)
OHIO,)
)
 Defendant.)

Case No.
2:22-cv-1775

DEPOSITION
of THOMAS L. HART

Taken at the offices of
Vorys Sater Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

on January 11, 2024, at 9:30 a.m.

Reported by: Julia Lamb, RPR, CRR

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STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition of THOMAS L. HART, the witness
herein, called by the Defendant under the
applicable Rules of Federal Civil Court
Procedure, may be taken at this time by the
stenographic court reporter and notary public by
agreement of counsel; that said deposition may
be reduced to writing stenographically by the
court reporter, whose notes thereafter may be
transcribed outside the presence of the witness;
and that the proof of the official character and
qualification of the notary is waived.

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1 THOMAS L. HART

2 being first duly sworn, as hereinafter certified,
3 deposes and says as follows:

4 CROSS-EXAMINATION

5 BY MR. SCHUMACHER:

6 Q. Could you please state your full name
7 for the record.

8 A. Thomas Leo Hart.

9 Q. Mr. Hart, where are you employed?

10 A. 5029 Cemetery Road in Hilliard with
11 Nathan Painter & Associates firm, although I'm
12 self-employed, but that's where I work.

13 Q. Okay. So you're not -- you don't work
14 for Painter & Associates as an attorney?

15 A. No. I'm -- I work at their office.

16 Q. I see. Do you work with any other
17 attorneys in your practice?

18 A. With Nathan Painter, yes.

19 Q. Describe, then, the relationship with
20 Mr. Painter.

21 A. Do you mean the business relationship --

22 Q. Yes.

23 A. -- or just the work we do?

24 Q. The business relationship.

1 A. I essentially rent from him.

2 Q. Okay.

3 A. Yeah. In an of counsel capacity in the
4 business operation.

5 Q. So you rent and you pay your own legal
6 malpractice coverage, those kinds of things?

7 A. Correct.

8 Q. How long have you had this relationship
9 with Painter & Associates?

10 A. Let's see. February of '22. I'm sorry.
11 '21.

12 Q. And prior to February of '21 where did
13 you work?

14 A. Isaac wiles.

15 Q. I understand you were a partner there?

16 A. Correct.

17 Q. For how many years?

18 A. Since 2014. There had been a merger.
19 It was after the merger. I think it was 2014.

20 Q. And prior to Isaac wiles where were you
21 employed?

22 A. wiles, Burkholder, Bringardner -- wiles,
23 Boyle, Burkholder, Bringardner.

24 Q. How many years did you work for them?

1 A. Since 2007.

2 Q. And before that?

3 A. I was in a home building company as one
4 of the in-house counsels called Dominion Homes.

5 Q. How many years did you work for Dominion
6 Homes?

7 A. About four and a half since 2003.

8 Q. And before that you were with BIA?

9 A. Correct.

10 Q. What was your role at BIA?

11 A. I was executive director from '97 --
12 late '97 until 2003.

13 Q. As executive director of -- it was the
14 central Ohio BIA, wasn't it?

15 A. Correct.

16 Q. What was the -- what was your job duties
17 as executive director?

18 A. Managing of the organization, devising a
19 public policy agenda for our advocacy and
20 lobbying, being the point person for
21 communications for home building in the region,
22 a lot of interaction with public officials,
23 public bodies and, you know, city councils,
24 county commissions, township trustees, managing

1 staff. I also had to run home shows, like the
2 Parade of Homes.

3 Q. And before working with BIA, where did
4 you work?

5 A. I spent eight years in the legislature
6 as a lobbyist for the Ohio Manufacturers'
7 Association in various capacities.

8 Q. Where did you go to law school?

9 A. Capital University.

10 Q. What year did you graduate?

11 A. '94 I believe.

12 Q. Your work with Isaac Wiles and the
13 firm -- the Isaac firm before that, what was the
14 nature of your practice there?

15 A. I was a zoning lawyer, zoning land use
16 lawyer.

17 Q. Is it fair to say that your career has
18 been essentially representing and advocating for
19 the building and developing side of property
20 development and land use?

21 MR. INGRAM: Objection to form.

22 You may answer.

23 A. After the statehouse -- after my
24 statehouse career, that's correct.

1 Q. So with the BIA obviously you're
2 advocating public policy for the development of
3 housing, aren't you? That was your role?

4 A. Housing, land development, yes.

5 Q. Okay. And then as you moved into
6 private practice I assume you represented
7 developers who were intending to develop
8 property?

9 A. Yes.

10 Q. Have you ever represented a city or
11 municipality who was in a zoning battle with a
12 developer?

13 MR. INGRAM: Objection to form.

14 A. Our firm had a municipal practice; so
15 yes, I represented municipalities on zoning
16 issues. I don't know if I would say it related
17 to battles, but I definitely represented
18 municipalities.

19 Q. You've testified before a number of
20 municipal planning commissions and city councils
21 as an advocate for developers?

22 A. Yes.

23 Q. What is your role in this case,
24 Lifestyle versus the City of Worthington?

1 MR. INGRAM: Objection to form.

2 A. It's a very general question. I'll
3 answer initially by saying, you know, I was the
4 developer's lawyer of record for the application
5 that Lifestyles filed in 2020 I believe was the
6 first time I was involved.

7 Q. You agreed to appear here voluntarily?

8 A. Yes.

9 Q. You're not being represented by the
10 Vorys Sater firm, are you?

11 A. I am for this deposition by Chris.

12 Q. Have you entered into any kind of
13 agreement with them in terms of payment of their
14 fees?

15 A. No.

16 Q. What have you done to prepare for the
17 deposition today?

18 A. I met with Chris. I viewed several
19 planning commission meeting videos and council
20 videos and then read the complaint that has been
21 filed.

22 Q. When did you read the complaint? When's
23 the first time you read the complaint?

24 A. Well, I probably read the complaint

1 first time when it was filed.

2 Q. In March of '22?

3 A. I mean, I can't tell you exactly.

4 Q. But if it was filed in March of '22, is
5 that the first time you would have read it?

6 A. Contemporaneously with that date, yes.

7 Q. Did you ever have the opportunity to
8 read the complaint before it was filed?

9 A. No.

10 Q. Did you meet with any of the Lifestyle
11 Communities' lawyers prior to its filing about
12 the litigation?

13 A. Not that I can recall.

14 Q. Other than the videos and -- other than
15 the videos of the municipal planning commission
16 meetings and the city council meetings that you
17 just referred to, have you reviewed any other
18 documents in preparation for the deposition?

19 A. I don't think so, no.

20 Q. Have you reviewed any of the depositions
21 that have been taken in this case?

22 A. No.

23 Q. Have you reviewed any summaries prepared
24 for you by the lawyers for Lifestyle

1 Communities?

2 A. No.

3 Q. The Plaintiff in the lawsuit is
4 Lifestyle Communities and Worthington -- is
5 Lifestyle Communities, Ltd. and Worthington
6 Campus. Are you familiar with those
7 organizations?

8 A. I'm familiar with Lifestyle Communities.

9 Q. Do you know of any Lifestyle Communities
10 affiliate companies?

11 MR. INGRAM: Objection to form.

12 You can answer if you can.

13 A. No, I'm not -- not that I can -- not
14 that I can remember.

15 Q. So when I refer to Lifestyle Communities
16 or Lifestyle, do you understand I mean the
17 Plaintiffs in this lawsuit as well as Lifestyle
18 Communities, Ltd.'s affiliate companies?

19 MR. INGRAM: Same objections.

20 A. Generally, yes. Yeah.

21 Q. Have you ever given a deposition before?

22 A. Have I ever had one taken of me?

23 Q. Yes.

24 A. Yes.

1 Q. How many times?

2 A. I would say between five and 10.

3 Probably not 10. More around five.

4 Q. Have you ever taken a deposition like
5 we're doing here today as a lawyer?

6 A. Yes.

7 Q. How many depositions do you think you've
8 taken in your career?

9 A. About the same number. Probably between
10 five and 10.

11 Q. So the five to 10 depositions that
12 you've given, what types of matters were those
13 given in?

14 A. One was a series -- a lawsuit against
15 the BIA when I was executive director. We ran
16 some polling of public officials, and a former
17 mayor of a city sued the organization for
18 defamation, among other things, I think. That
19 was one.

20 Q. Do you know the name of the case or the
21 name of the mayor?

22 A. Her name is Rita Ricketts, former Mayor
23 Rita Ricketts of Pickerington.

24 Q. How do you spell that?

1 A. R-I-C-K-E-T-T-S. Her son's a prominent
2 lawyer in Pickerington, Rick Ricketts.

3 Q. And you were about to mention another
4 one.

5 A. Try to be brief on this. The BIA would
6 build basically a charity home that we would
7 sell to raise money for our charitable
8 foundation at each Parade of Homes when I was
9 executive director. And you know, we had a --
10 we would have a builder build it, and then we'd
11 sell it on the open market.

12 And one of those homes I believe -- you
13 know, home construction suit was filed, you
14 know, against that builder and the BIA as the --
15 we financed the house basically at that time.
16 And so there were multiple depositions I believe
17 on that case, you know, on construction defect
18 issues.

19 Q. Any other cases where you've testified
20 in litigation between a developer and a
21 municipality of some kind?

22 MR. INGRAM: Objection to form.

23 A. I'll honestly say there may have been.
24 It's -- I don't remember them -- you know, that

1 kind of thing at this time, but it's possible.

2 It's been 25 years.

3 Q. Is it fair to say that you acted as a
4 representative of Lifestyle Communities in
5 filing the application with the city of
6 Worthington?

7 MR. INGRAM: Objection to form.

8 A. Yes.

9 Q. Have you ever done work such as that
10 before for Lifestyle Communities or one of its
11 affiliate companies?

12 A. I don't believe so, no.

13 Q. So is this the first time that you were
14 ever involved with any of Lifestyle Communities'
15 companies?

16 MR. INGRAM: Objection to form.

17 A. I may have done some other work for them
18 on related matters, you know, with helping with
19 different municipal processes or even some of
20 their construction issues, but whether that
21 happened before this or after that, there was
22 some other work I did for them that was not
23 zoning related.

24 Q. well, before we get to work that you may

1 have done after this matter, what type of
2 unrelated matters did you consult with them on
3 regarding municipal processes?

4 MR. INGRAM: Objection to the extent
5 you're calling for this witness to disclose any
6 client confidential information.

7 To the extent you can answer this
8 question without disclosing any requests for
9 legal advice from you or any legal advice you
10 provided to any Lifestyle organization or its
11 affiliates, you may answer.

12 A. Like any developer/home builder, they
13 have permitting processes, and approval
14 processes, and engineering approvals, things
15 that occur -- development approvals, things that
16 occur after zoning, and I believe I helped them
17 with a couple of those types of issues with the
18 city of Columbus. That is a common thing in my
19 practice because of my involvement with city and
20 local governments.

21 Q. So if I were to ask Lifestyle
22 Communities, have you paid Tom Hart any legal
23 fees for services prior to the city of
24 Worthington case, do you think they would answer

1 yes?

2 MR. INGRAM: Objection. Calls for
3 speculation. Argumentative.

4 A. Could you repeat the timeline part of
5 that question?

6 Q. Prior to --

7 A. Prior to.

8 Q. -- working on the project involving the
9 city of Worthington.

10 MR. INGRAM: Same objections.

11 A. I'm not going to be able to tell you
12 whether the work I did for them outside of, you
13 know, this case was -- the subject matter of the
14 case was before or after I got involved in the
15 case, but you know, I definitely did some work
16 for them relating to issues with the city of
17 Columbus, potentially New Albany, but I don't
18 know when that -- I can't remember when that
19 was.

20 Q. Would you have a file on those matters?

21 A. File -- that file would be at Isaac
22 Wiles because that client stayed with that firm
23 when I left. So I don't have any of their
24 files.

1 Q. So basically what you're telling me is
2 you don't know if you received any compensation
3 from Lifestyle Communities before you started
4 working on the city of Worthington project?

5 MR. INGRAM: Objection.
6 Mischaracterizes prior testimony.

7 Q. It's a question. You just don't know
8 one way or the other?

9 A. I don't know.

10 Q. What about after you became involved in
11 this particular project for the UMCH property,
12 have you worked for them again?

13 A. It's really the same answer. Whether
14 I -- I definitely did some other work for them,
15 limited, very limited, but whether it was before
16 or after, I can't recall.

17 Q. All right. For any work that was done
18 after, I'm assuming you would have record of
19 that work?

20 A. Again, I don't -- I didn't take them
21 with me when I left Isaac Wiles, and Lifestyle's
22 not a client today. I only took the files from
23 Isaac Wiles that were going to be ongoing
24 clients.

1 Q. So since '21 when you left -- 2021 when
2 you left, you have not worked for Lifestyle
3 Communities or its affiliates?

4 A. I believe that's correct.

5 Q. When I speak about the UMCH property, do
6 you understand the property that I'm discussing?

7 A. Yes.

8 Q. So if I call it the property today, will
9 you understand that I'm talking about the 30 to
10 40 acres that's on High Street at about 1033
11 High Street?

12 A. Yes.

13 Q. Actually you would know specifically
14 where that property is because you were the
15 applicant to have that property rezoned, weren't
16 you?

17 A. I was the agent for the applicant, yes.

18 Q. But you were retained by Lifestyle
19 Communities to file those applications and
20 proposals, weren't you?

21 MR. INGRAM: Objection. Do not answer
22 that question. That calls for the disclosure of
23 attorney-client privileged communications.

24 MR. SCHUMACHER: So you're not going to

1 let him answer whether he was the zoning
2 attorney that was retained by Lifestyle
3 Communities to file the application to rezone
4 the property?

5 MR. INGRAM: Your question -- your prior
6 question was a different one.

7 Q. Well, were you the attorney retained by
8 Lifestyle Communities to file the application to
9 redevelop the UMCH property?

10 A. One of the applications, I guess, yes.
11 Let me correct that. I was only -- I wasn't
12 involved in any prior efforts or anything before
13 2020.

14 Q. Were you authorized to speak on behalf
15 of Lifestyle Communities, Ltd. and Worthington
16 Campus, LLC on their behalf?

17 A. Yes.

18 MR. INGRAM: Objection to form. Vague.
19 Ambiguous.

20 You can answer if you can.

21 Q. I think you did.

22 A. Yes, in terms of the application process
23 and the public hearing process.

24 Q. You also testified in several public

1 hearings as the lawyer for Lifestyle Communities
2 on this application, didn't you?

3 A. Yes.

4 Q. And you did that under oath, didn't you?

5 A. I can't recall -- you know, every
6 municipality's a little different in terms of
7 when they put you under oath. I may have, but
8 I'm not -- I'm not sure they swear people in
9 during their processes. I'd have to watch the
10 hearing again. Some do. Some don't.

11 Q. Well, you stand behind the statements
12 you made at those hearings, don't you?

13 A. Yes.

14 Q. Have you ever attended any other public
15 meetings of the city of Worthington?

16 A. Other than what?

17 Q. Other than the municipal planning
18 commission meetings that you've attended and the
19 city council meetings that you've attended about
20 the UMCH property.

21 A. Okay. Well, it's likely that I have in
22 my years of going to municipal hearings that
23 I've been to their meetings before either in BIA
24 or Dominion or whatever. I mean, it's likely.

1 Q. So I know I asked you questions about
2 your work for Lifestyle Communities, but with
3 regard to the city of Worthington, have you made
4 prior applications to that community that you
5 recall?

6 A. I don't recall.

7 Q. Mr. Hart, may I call you Tom?

8 A. Sure.

9 Q. Tom, when were you first retained in
10 this particular matter to make the application
11 on behalf of Lifestyle Communities and
12 Worthington Campus?

13 A. I'm not going to be able to give you or
14 remember an exact date. There was a period of
15 time we started talking, and then the -- you
16 asked -- specifically you said the application.
17 That really didn't start until 2020, you know,
18 probably spring of 2020.

19 Q. Well, let me ask you this -- go ahead.
20 I'm sorry.

21 A. No. Please.

22 Q. Were you ever actually retained by
23 Lifestyle Communities as an attorney to
24 represent them?

1 A. Yes. I mean, technically they were an
2 existing client of the firm's. So whether there
3 was -- there was no retainer letter for me
4 personally. They had been working with other
5 folks there on all kinds of other corporate
6 matters and so forth, but they started talking
7 to me on and off, fits and starts, before 2020.
8 Exactly when that was, I don't remember.

9 Q. Did you bill them for your services?

10 MR. INGRAM: Objection to form.

11 A. Yes.

12 Q. Would the bills tell us when you were
13 first -- when you first started talking on and
14 off to them?

15 A. I'm not sure.

16 Q. I mean, if I send a subpoena to Isaac
17 wiles for their billing records solely to
18 understand when you first started working -- the
19 date you first started working for Lifestyle
20 Communities on this project, meaning talking to
21 them on and off, would those records tell us the
22 answer to that question?

23 MR. INGRAM: Objection. Asked and
24 answered. Now you're getting argumentative,

1 Counsel, and this is not even remotely relevant.

2 MR. SCHUMACHER: Will you agree, then,
3 to provide me with the date from Isaac Wiles
4 records as to when Mr. Hart first started
5 working for Lifestyle Communities?

6 MR. INGRAM: No. It's not relevant.

7 MR. SCHUMACHER: Okay. We can agree to
8 disagree whether it's relevant. I just want to
9 know when it happened, and he's telling me that
10 he can't remember the exact date.

11 Q. But it was before 2020, right?

12 A. Well, you asked about billing.

13 Q. So that I can understand when you
14 started working for them.

15 A. Well, I understand.

16 Q. Okay.

17 A. So what I'll tell you is those records
18 would show a lot of billing in 2020. That's
19 when I was definitely working for them a lot and
20 billing a lot. What I'm answering is before
21 that I'm not sure. You know, there was fits --
22 before 2020 I talked to them. Whether I billed
23 them or not, you know, there was some fits and
24 starts, initial conversations. The work I

1 really started doing and really -- that you
2 definitely see bills on would be in 2020.

3 Q. Okay. I don't want to see the bills. I
4 just want to know when. Okay? We clear? You
5 certainly started talking to them in 2019,
6 didn't you?

7 A. Yes, probably. Yes.

8 Q. Who first approached you, Tom?

9 A. I know for sure it would have been a guy
10 named Jode Ballard. Whether it was anyone else,
11 I can't say, but that was the main point person
12 that I dealt with.

13 Q. Had you dealt with him before?

14 A. No.

15 Q. What was his role at Lifestyle
16 Communities?

17 A. I can answer what his role was with me
18 and the project, but what he did there -- I
19 believe he was a landscape architect. His role
20 with me was just the internal pointman for
21 Lifestyles on the project.

22 Q. So when you say you first started
23 talking on and off, was he the person you
24 started talking to?

1 A. Yes.

2 Q. Were there others?

3 A. Probably, but I don't remember if it was
4 anyone else besides him.

5 Q. Did anyone request from you, since this
6 lawsuit was filed, communications or documents
7 from you that you may have had with Lifestyle
8 Communities?

9 A. No.

10 Q. Do you have emails and other documents
11 involving communications with Lifestyle
12 Communities about this project?

13 A. That would be at Isaac Wiles. No, I
14 don't. I didn't take the files.

15 Q. What did Mr. Ballard want from you,
16 then, when he first approached you?

17 MR. INGRAM: Objection. Calls for
18 speculation.

19 Q. What did he discuss with you?

20 MR. INGRAM: Objection. To the extent
21 Mr. Ballard or anyone from Lifestyle requested
22 you to provide legal advice, I'm instructing you
23 not to answer that question. To the extent you
24 can answer otherwise, you may do so.

1 MR. SCHUMACHER: Chris, I'm not asking
2 for the legal advice. I'm just asking whether
3 he asked him to do work.

4 MR. INGRAM: Counsel, your question is
5 what did you discuss. What did he discuss with
6 you.

7 MR. SCHUMACHER: I just said I don't
8 want to know what he discussed.

9 Q. I want to know what he asked you to do.
10 When did he retain you, or did he retain you?

11 MR. INGRAM: Objection. Asked and
12 answered.

13 Q. All right.

14 A. Not sure which question.

15 Q. Let's start over. You had conversations
16 with Mr. Ballard about this property, right?

17 A. Yes.

18 Q. All right. Were any of those
19 discussions requests for legal opinions?

20 A. Yes.

21 Q. Okay. Did you provide any legal
22 opinions to him in a written way?

23 A. Honestly not sure if it was written or
24 just discussion.

1 Q. Okay. Tell me generally what it is that
2 Mr. Ballard wanted to talk about, then, in terms
3 of your involvement with this project.

4 MR. INGRAM: Again, same instruction
5 that I just gave you with respect to you're not
6 permitted to disclose any legal advice or legal
7 questions asked of you from anyone from
8 Lifestyle.

9 A. Much like all my zoning clients, he
10 wanted help with the application process.

11 Q. And eventually you were officially hired
12 to help with the application process?

13 MR. INGRAM: Objection to form.

14 A. Yes.

15 Q. And you became the attorney who signed
16 the application on behalf of Lifestyle
17 Communities?

18 A. I'm not trying to be picky or something,
19 but every municipality has a different
20 application form process. Sometimes the
21 attorneys sign as the agent or the applicant,
22 sometimes only the owner signs, sometimes only
23 the -- you know, the developer applicant signs.
24 So exactly whether I signed or not, you know, I

1 wouldn't be able to tell you, but was I the
2 person who helped prepare the application and
3 file it with the city, yes.

4 Q. Prior to filing the application, did you
5 have any meetings with anyone from the city of
6 Worthington about the project?

7 A. You're asking prior to the initial
8 application?

9 Q. Yes.

10 A. I'm not quite sure, but I believe I went
11 in to see Lee Brown right before we filed. Now,
12 whether that was -- whether my memory is that
13 was either right before or contemporaneous with
14 the filing, I'm not sure. Might have been the
15 day of. So when you say prior, it may have been
16 the day of, it may have been two days before.
17 That's what I remember.

18 MR. SCHUMACHER: Off the record.

19 (Discussion off the record.)

20 ==0==

21 (Hart Exhibit 1 marked.)

22 ==0==

23 BY MR. SCHUMACHER:

24 Q. For the record, Mr. Hart, I'm handing

1 you what we've now marked as Hart Exhibit 1. So
2 take a minute to look at that.

3 A. (Witness complies).

4 Q. Have you had a chance to look that over?

5 A. Yes.

6 Q. Am I correct that the first two pages of
7 Exhibit 1 are the original application that you
8 made on October 2nd, 2020 to the city of
9 Worthington?

10 MR. INGRAM: Objection. The first two
11 pages are only the first two pages.

12 Q. That's why I asked the question. Are
13 the first two pages a portion of the application
14 you made on October 20th -- I'm sorry,
15 October 2nd, 2020?

16 A. It's just the cover pages to the
17 application form.

18 Q. And page 3 is your letter submitting a
19 revised concept plan in September -- I think
20 September 10th of 2021. Is that correct?

21 A. Yes.

22 Q. Okay.

23 A. Could I correct something really quick?

24 Q. Sure.

1 A. I believe that I said earlier that I
2 left Isaac Wiles and went to Painter in '21, and
3 it was February '22.

4 Q. Okay.

5 A. Time flies. I saw these dates, and I've
6 been with Painter since February of 2022.

7 Q. Mr. Hart, I'm going to hand you what --

8 MR. SCHUMACHER: I don't know how you
9 want to do this, Chris, but I got to take it
10 back. You can make a copy if you want.

11 Q. I'm handing you what I believe is your
12 October 2nd, 2020 initial application to the
13 city of Worthington on behalf of Lifestyle
14 Communities and its affiliate company.

15 (Recess taken.)

16 BY MR. SCHUMACHER:

17 Q. We've now remarked Exhibit 1. Is
18 Exhibit 1 a two-page application that you made
19 as applicant to the city of Worthington on
20 October 2nd, 2020?

21 A. Yes.

22 Q. Is that a true and correct copy of the
23 application you made to rezone the UMCH property
24 on behalf of Lifestyle Communities?

1 MR. INGRAM: Objection to form.

2 A. Yes.

3 Q. Okay. This document indicates at the
4 bottom please read the following statement and
5 sign your name. Do you see that?

6 A. Yes.

7 Q. Is that your name under the
8 instructions, your signature?

9 A. Yes.

10 Q. And who else signed?

11 A. I don't know.

12 Q. Was that someone from UMCH?

13 A. It looks like it. I'm not sure.

14 Q. Now, you made this application, right?

15 A. Yes.

16 Q. And you had to go get a signature from
17 the property owner as well as you, the
18 applicant, right?

19 A. Yes.

20 Q. Did you endeavor to go obtain a
21 signature from the actual property owner?

22 A. Yes.

23 Q. And you just don't recall who that was?

24 A. Correct. I don't remember who it was.

1 Q. Lifestyle Communities and its affiliates
2 did not own the property on October 2nd, 2020?

3 A. That's correct.

4 Q. Did you ever review any development
5 agreements or contracts between UMCH and
6 Lifestyle Communities or its affiliates?

7 MR. INGRAM: Objection to form.

8 A. I don't recall whether I did or didn't.

9 Q. Were they relevant or pertinent to your
10 work for Lifestyle Communities?

11 MR. INGRAM: Objection to form.

12 A. No.

13 Q. This document also indicates that you --
14 that the information contained in this
15 application and in all attachments are true and
16 correct to the best of your knowledge. You saw
17 that?

18 A. Yes, I saw it.

19 Q. Do you also see that the document that
20 you signed indicates that, "I further
21 acknowledge that I have familiarized myself with
22 all applicable sections of the Worthington
23 codified ordinances and will comply with all
24 applicable regulations"? Do you see that?

1 A. Yes, I see it.

2 Q. And you signed that?

3 A. Yes.

4 Q. Did you do that?

5 MR. INGRAM: Objection to form.

6 Q. Did you do that? Objection to form.

7 Did you do that?

8 MR. INGRAM: Same objection.

9 A. I don't understand what you're asking
10 me.

11 Q. Did you review the codified ordinances
12 of the city of Worthington?

13 A. Yes.

14 Q. And you became familiar with those
15 ordinances?

16 A. Generally, yes.

17 Q. You needed to do that in order to
18 prepare and file an appropriate application,
19 didn't you?

20 MR. INGRAM: Objection to form.

21 A. Yes.

22 Q. Now, I'm going to mark this document in
23 front of you in the binder as Exhibit 2.

24 MR. SCHUMACHER: Mr. Ingram, would you

1 like a copy of this document or do you have one?

2 MR. INGRAM: We've got a copy of it.

3 MR. SCHUMACHER: Okay. Could you put a
4 sticker on the front of it.

5 May I retain the original?

6 MR. INGRAM: It's your deposition.

7 MR. SCHUMACHER: I will retain the
8 original.

9 ==0==

10 (Hart Exhibit 2 marked.)

11 ==0==

12 BY MR. SCHUMACHER:

13 Q. Mr. Hart, we now marked as Exhibit 2 the
14 complete binder that I believe you submitted to
15 the city of Worthington on October 2nd, 2020 to
16 rezone the UMCH property, correct?

17 A. I'm not sure when I submitted it.

18 Q. Let's look back at Exhibit 1. Does
19 Exhibit 1 indicate you filed the application on
20 October 2nd, 2020?

21 A. No.

22 Q. When was it filed?

23 A. I'm not exactly sure when it was filed.

24 Q. Do you have a copy of the application

1 you filed with the city of worthington?

2 A. Personally?

3 Q. Yes.

4 A. No.

5 Q. Are you disputing that the original
6 application to rezone the UMCH property was
7 filed on October 2nd, 2020?

8 A. No, I'm not disputing it.

9 Q. Well, then, why can't you say it was
10 filed on October 2nd, 2020?

11 MR. INGRAM: Objection. Asked and
12 answered. Now you're getting argumentative.

13 Q. I'm trying to understand why you can't
14 agree with me that that's the application you
15 filed on October 20th, 2020. It's a simple
16 question.

17 A. Signing applications and dating them and
18 then when they are filed are often different
19 things, different times.

20 Q. Okay. Was it generally within days of
21 October 2nd, 2020 that you filed this
22 application on behalf of Lifestyle Communities?

23 A. Yes, likely.

24 Q. And is Exhibit 2 the attachments and

1 documentation you presented to Lee Brown at the
2 city of Worthington to make this application?

3 A. Yes.

4 Q. If you could refer to page 5 of that
5 application. I think it's 5.

6 MR. INGRAM: Counsel, which section?

7 Q. You'll get to it. It's paginated there.
8 I think it's right here. In the text of the
9 actual document.

10 A. The zoning text?

11 Q. Yeah. No. I'll get it. Yeah. Flip
12 the next page.

13 Before we get to that, did you prepare
14 this text starting at page 1 of this section?

15 A. I prepared the text.

16 Q. Okay. And if you'll flip to the next
17 page. This one here, page 5. Under Section IV,
18 Roman numeral IV, development standards and
19 development standards text per subarea. Do you
20 see that?

21 A. Yes.

22 Q. Did you prepare that?

23 A. I likely had this table prepared by
24 someone else, by my assistant.

1 Q. Did you get the information from someone
2 at Lifestyle Communities or one of its
3 affiliates?

4 A. Yes.

5 Q. That particular section of the
6 application proposes a total of 730 residential
7 units?

8 A. Yes.

9 Q. You knew at that time that 730
10 residential units was in excess of the informal
11 proposal that was made in 2015 by Lifestyle
12 Communities, didn't you?

13 MR. INGRAM: Objection. Assumes facts
14 not in evidence.

15 A. No.

16 Q. So you weren't aware of anything that
17 occurred in 2015 regarding Lifestyle Communities
18 informal application to the city of Worthington?

19 MR. INGRAM: Objection. Asked and
20 answered.

21 MR. SCHUMACHER: I don't think he did.

22 A. There was never an application to my
23 knowledge in terms of what people told me. I
24 wasn't involved in it.

1 Q. Right. But you certainly were aware in
2 2020 that there had been a presentation at the
3 WEC by Lifestyle Communities' representatives
4 about this exact same project, didn't you?

5 MR. INGRAM: Objection.
6 Mischaracterizes this witness's prior testimony.

7 A. I knew there was a presentation.

8 Q. And you didn't review any documents or
9 talk to anyone at Lifestyle Communities about
10 the residential density that was proposed in
11 2015. Is that what you're saying?

12 A. Yes. That was not my focus.

13 Q. So no one at Lifestyle Communities ever
14 informed you that they made a presentation at
15 the WEC in 2015 for this same property?

16 MR. INGRAM: Objection. Asked and
17 answered.

18 Q. It's a different question.

19 A. Are you asking me did they tell me about
20 the presentation?

21 Q. Yes.

22 A. Yeah. They told me about the
23 presentation, yes.

24 Q. Did you ever read any documents about

1 that presentation?

2 A. I don't know.

3 Q. You were certainly aware by the time you
4 gave testimony to the MPC and city council that
5 there had been a proposal in 2015 by Lifestyle
6 Communities?

7 MR. INGRAM: Objection. Asked and
8 answered about five times.

9 Q. That's a different question. When you
10 gave testimony at those hearings, you knew about
11 the 2015 proposal that Lifestyle had made,
12 didn't you?

13 A. I knew about a presentation.

14 Q. You spoke about it at those hearings,
15 didn't you?

16 A. Well, you're calling it a present -- a
17 proposal. It was an informal presentation to a
18 community -- a group of community folks. It
19 wasn't --

20 Q. All I'm asking you, Tom, is did you know
21 about the 2015 informal presentation to a group
22 of residents at the WEC in 2015?

23 A. Yes.

24 MR. INGRAM: Objection. There's no

1 reason to raise your voice. You're getting
2 argumentative, Counsel.

3 MR. SCHUMACHER: I'm not raising my
4 voice. I'm trying to speak over your
5 objections.

6 Q. You knew about that presentation.

7 A. I knew about the presentation, yes.

8 Q. You knew that it was a presentation that
9 was presented by Lifestyle Communities' folks,
10 right?

11 A. Yes.

12 Q. You knew that they proposed a
13 residential density of 530 units?

14 MR. INGRAM: Objection.
15 Mischaracterizes his prior testimony.

16 A. No.

17 Q. You didn't know about that. You were
18 advised by Lifestyle Communities that that
19 presentation was met with community opposition,
20 didn't you?

21 MR. INGRAM: Objection to form.

22 A. I knew about the opposition during that
23 meeting.

24 Q. All right. So when you testify in front

1 of a federal court jury in this case, you're not
2 going to deny that you knew in 2015 that there
3 was substantial community opposition to the
4 residential density that was proposed at that
5 time by Lifestyle Communities in 2015, are you?

6 MR. INGRAM: Objection to form.
7 Mischaracterizes this witness's prior testimony.
8 Compound. Confusing.

9 You may answer to the extent you can.

10 Q. Would you like Julia to repeat the
11 question?

12 A. Well, it was several questions; so...

13 MR. SCHUMACHER: Why don't you repeat
14 the question.

15 (Record read as requested.)

16 MR. INGRAM: Same objections.

17 A. I'll answer by saying I knew that the
18 people who attended the meeting -- the
19 community's 14,000 people, I believe, but the
20 people who attended the meeting were generally
21 opposed to whatever they presented, and I would
22 say on many different aspects of the proposal.
23 The details of that plan, I never focused on the
24 2015 plans. That was not my job. That had

1 happened years earlier. I had nothing to do
2 with it. And so, you know, to the extent you're
3 asking me about the details of that plan I'm not
4 going to be able to answer.

5 Q. But you knew about it. That's all I
6 want to make sure.

7 A. I knew about the meeting.

8 Q. And you knew it was an issue when you
9 made your application in October of 2020?

10 MR. INGRAM: Objection. Misstates his
11 prior testimony.

12 A. What -- knew it was an issue. What
13 issue?

14 Q. You knew the issue that the residents
15 had negative feedback on in 2015 was an issue
16 when you made your presentation.

17 MR. INGRAM: Objection. Misstates his
18 prior testimony. Asked and answered.

19 Q. Right?

20 A. Paul, I think I answered.

21 Q. Okay. When you made the application,
22 Exhibit 1 and 2, in October of 2020, you knew
23 that the issue of residential density was going
24 to be an issue that you were going to have to

1 combat or fight, didn't you?

2 MR. INGRAM: Objection.

3 A. We were following the comprehensive
4 plan, and you know, the comprehensive plan
5 almost requires density at this site. I mean,
6 it talks about density and where density should
7 be, and certain parts of the comp plan give
8 specific densities, other parts are general, but
9 we were -- we filed an application to follow the
10 comp plan.

11 Q. But you knew that the residential
12 density was an issue that the Worthington
13 citizens were concerned about?

14 MR. INGRAM: Objection. Calls for
15 speculation.

16 A. I would answer by saying some.

17 Q. Right. So some of the residents were
18 concerned about residential density. That's an
19 issue you knew about, right?

20 MR. INGRAM: Objection. Same objection.

21 A. I think I just answered the same
22 question.

23 Q. Yes. And you argued as the city's
24 attorney and applicant at public hearings about

1 that residential density issue, didn't you?

2 MR. INGRAM: Objection. Misstates this
3 witness's prior testimony.

4 A. As the city's -- could you maybe -- as
5 the city's attorney?

6 Q. Uh-huh. You were the city's attorney
7 and applicant speaking for the city at those
8 meetings, weren't you?

9 A. No.

10 Q. No. So when you were speaking before
11 the municipal planning commission, you were not
12 speaking as the city zoning attorney?

13 A. No. Never been the city zoning
14 attorney.

15 Q. So when you were speaking before the
16 city council in December of '21 when this
17 application was eventually considered by city
18 council, you were not speaking as their
19 representative?

20 MR. INGRAM: Objection to form. who's
21 the their?

22 Q. Worthington -- I'm sorry, Lifestyle
23 Communities and Worthington Campus.

24 A. Okay. I'm a little confused. I think

1 you were -- Counsel, you were asking me if I was
2 speaking for the city in a number of questions
3 and you meant Lifestyle. I was Lifestyle's
4 attorney.

5 Q. Right. And as Lifestyle's attorney you
6 were aware when the application was made that
7 there was going to be Worthington citizen
8 opposition to the residential density that was
9 proposed?

10 MR. INGRAM: Objection. Calls for
11 speculation.

12 A. I didn't meet with citizens until after
13 we filed. So there's -- I didn't have any
14 direct contact with citizens until after we
15 filed.

16 Q. Did you ever review any of the documents
17 on the city of Worthington's website concerning
18 this particular property?

19 A. Yes.

20 Q. When did you do that?

21 A. Prior to filing.

22 MR. SCHUMACHER: Make this Hart 3.

23 ==0==

24 (Hart Exhibit 3 marked.)

1 --0--

2 BY MR. SCHUMACHER:

3 Q. Have you had a chance to review
4 Exhibit 3?

5 A. Yes.

6 Q. Have you ever seen that before?

7 A. No.

8 Q. Are you aware it has been posted on the
9 city's website for many years?

10 A. No.

11 Q. So you see in the document that it
12 mentions conceptual plans that were apparently
13 presented in a recent public meeting on
14 June 29th, 2015? You see that in the first
15 paragraph?

16 A. Yes.

17 Q. That's the meeting we talked about
18 earlier that you heard about?

19 A. Yes.

20 Q. Was the content of the statement relayed
21 to you by anyone from Worthington Campus or
22 Lifestyle Communities?

23 MR. INGRAM: Objection to form.

24 Q. The substance of this document.

1 A. No.

2 Q. You never heard about the -- I'll
3 withdraw the question.

4 MR. SCHUMACHER: Hart Exhibit 4.

5 --0--

6 (Hart Exhibit 4 marked.)

7 --0--

8 MR. INGRAM: Counsel, Exhibit 4 is only
9 one page, but that doesn't appear to be the
10 entire document.

11 MR. SCHUMACHER: It's the only thing I
12 had. It may be. I can go back on the website
13 and look.

14 It's only one page.

15 BY MR. SCHUMACHER:

16 Q. Have you had a chance to review
17 Exhibit 4?

18 A. Yes.

19 Q. Have you ever seen this document before?

20 A. No.

21 Q. So in your research and preparation for
22 making an application in October of 2020 you did
23 not view this document on Worthington's website?

24 MR. INGRAM: Objection. Asked and

1 answered.

2 A. No.

3 Q. Would you agree, however, that the city
4 of Worthington in your experience has a long
5 established process for reviewing development
6 applications?

7 A. After the experience, I'm not sure what
8 their process really is, but they have one.

9 Q. Well, before you submitted this
10 application, did you know that any changes in
11 zoning would first have to be approved by the
12 city's municipal planning commission?

13 A. They're a recommending body. They don't
14 approve.

15 Q. You said you reviewed the city of
16 Worthington's codified ordinances and zoning
17 regulations?

18 A. Yes.

19 Q. And you know, then, that any application
20 for the change in zoning would need to be
21 reviewed by the municipal planning commission
22 for their recommendation, right?

23 A. Yes.

24 Q. In this case the application you made,

1 Exhibit 1 and 2, was reviewed by the municipal
2 planning commission according to this long
3 established process, right?

4 MR. INGRAM: Objection to form.

5 A. Yes. We had two hearings at the
6 planning commission.

7 Q. And you spoke at both hearings?

8 A. Yes.

9 Q. And that recommendation, then, must be
10 approved by city council with the additional
11 opportunity for public comment, right?

12 A. Approved or disapproved, yeah.

13 Q. Right. But a hearing is held before
14 city council?

15 A. Yes.

16 Q. That's the process that the city of
17 worthington has long employed for these types of
18 applications, in your experience, right?

19 MR. INGRAM: Objection to form.

20 Q. Let me finish my question before you
21 object.

22 A. Yes.

23 Q. Do you see in the document that the city
24 council's statement that was made on

1 October 12th, 2015 indicates that the process is
2 being followed in the development of the United
3 Methodist Children's Home and that the city
4 encouraged UMCH and its developer to present
5 potential plans to the public for discussion?

6 A. I'm not sure what the question is.

7 Q. You see that paragraph, fifth paragraph
8 down?

9 A. I see it.

10 Q. And do you see the seventh paragraph
11 where the city council's statement on
12 October 12th, 2015 indicates that attendees at
13 the meeting had significant opposition to the
14 plan, and city council sent a letter to the
15 developer stating the citizens' comments should
16 be considered?

17 A. Yes, I see it.

18 Q. When did you first get involved in any
19 community outreach to gain support for the
20 application you filed on behalf of your client?

21 MR. INGRAM: Objection to form.

22 You may answer to the extent you can.

23 A. I would say community outreach began
24 after the initial application. I'm not sure

1 exactly when.

2 Q. What role did you have in any community
3 outreach on behalf of Lifestyle Communities or
4 its affiliates?

5 A. I conducted it.

6 Q. You were their zoning lawyer, right?

7 A. Yes.

8 Q. And you were the applicant?

9 MR. INGRAM: Objection. Asked and
10 answered. We've been over this several times
11 now.

12 A. I technically was the applicant as well
13 under their form, yes.

14 Q. Okay. What community outreach did you
15 do?

16 A. Lee Brown kept a list that reached over
17 a hundred people of folks who would -- citizens
18 who had contacted his office wanting information
19 or asking questions. I kept a running
20 compilation of those citizens, and then invited
21 them all to multiple Zoom meetings. This was
22 during COVID so there was no -- they weren't
23 going to do any in-person meetings with those
24 folks. So I probably conducted at least five to

1 six of those meetings where we invited whoever
2 was on that list and then matched you know -- we
3 tried to keep -- we tried to keep those meetings
4 under 20 people, just managing time, but we did
5 five or six of those with the list of people who
6 said they -- who the city wanted us to reach out
7 to. So that was one example. We met with
8 various groups, you know, formed interested
9 groups of citizens. One group was called WARD.
10 I met with them for hours. Met with -- there's
11 a Worthington business group. I can't recall
12 the exact name. Met with them I think three
13 times.

14 Q. Building Worthington's Future?

15 A. That's the one, yes.

16 Q. They're pro development?

17 A. I would say some of them are. I would
18 say some of them are, you know, more like the
19 WARD folks, but they're all businesspeople is
20 what, you know, makes them -- defines them. Met
21 with the school superintendent and his
22 professional staff twice to go over the
23 financial implications of the project to the
24 school district and get their -- make sure we

1 were correct on those calculations, and I would
2 say those are the main things we did, and then,
3 you know, I conducted all that.

4 Q. Had Lifestyle Communities or its
5 affiliates done any kind of outreach prior to
6 your involvement and the work you did, to your
7 knowledge?

8 A. I don't know.

9 Q. Did they provide you with any
10 information about outreach they'd done?

11 A. No.

12 Q. When is the first time you reviewed the
13 city of Worthington's comprehensive plan?

14 A. I don't know.

15 Q. Obviously before you filed Exhibit 1 and
16 2?

17 A. Likely.

18 Q. Well, you --

19 A. That would be my normal course, yes.

20 Q. You testified you considered the
21 comprehensive plan when you made the application
22 so I presume you read it before you did so?

23 A. Yes.

24 Q. You knew that the comprehensive plan was

1 a guiding document?

2 MR. INGRAM: Objection to form.

3 A. No, not in Worthington. In Worthington
4 you have to zone based on the comprehensive
5 plan. So it's got a much different status than
6 most jurisdictions I'm familiar with.

7 Q. And what -- which -- can you point me to
8 the codified ordinance that you're referring to
9 that requires --

10 A. I'm not going to be able to do that.

11 MR. INGRAM: Objection. Counsel, do you
12 have a copy of the municipal code for him to
13 review?

14 MR. SCHUMACHER: I could probably pull
15 that up here.

16 Q. You -- have you read the Court's opinion
17 in this case on the motion to dismiss that was
18 filed?

19 A. No.

20 Q. So are you aware that the Court has
21 granted a portion of the city of Worthington's
22 motion to dismiss counts in this case?

23 A. No.

24 Q. So you're not aware of that at all?

1 A. No.

2 Q. So counsel's not made you aware of the
3 fact that this judge has dismissed a number of
4 the counts in that complaint?

5 A. I think counsel did tell me that.

6 Q. And did counsel advise you that the
7 Court ruled that the comprehensive plan is not
8 binding on the city?

9 MR. INGRAM: Objection. Do not answer
10 this question to the extent you would disclose
11 any of our communications. To the extent you've
12 come to know this information outside of our
13 discussions, you may answer.

14 A. Could you repeat the question.

15 MR. SCHUMACHER: Julia.

16 (Record read as requested.)

17 A. No.

18 Q. Tell me about your interaction with
19 WARD. Who exactly did you meet with at WARD?

20 A. I'm not going to remember that. That
21 was years ago now.

22 Q. Can you tell me what WARD's mission is?

23 A. No.

24 Q. Can you tell me whether they were in

1 favor of the application that you made?

2 MR. INGRAM: Objection. Calls for
3 speculation.

4 Q. You went to their meetings and you made
5 the application.

6 MR. INGRAM: Same objection.

7 Q. Did you get a sense for what their
8 feeling was about the application that you filed
9 on behalf of Lifestyle Communities?

10 MR. INGRAM: Same objection.

11 A. Yes.

12 Q. What was it?

13 A. Opposition.

14 Q. Why were they opposed to your
15 application?

16 MR. INGRAM: Same objection.

17 A. To remember -- it'd be hard for me to
18 remember all the things those people said. I
19 mean, it was things that related to zoning,
20 things that related to development, things that
21 didn't. You know, just all over the place.

22 Q. Did you meet with them just one time?
23 You said it was hours.

24 A. Well, one time it was for hours.

1 whether I met with them again, I can't recall.

2 I certainly had other conversations with, you
3 know, parts of their group.

4 Q. Who were those people, the leadership?

5 A. I can't remember the leader's name.

6 Q. Tom, this was a citizen group, right?

7 A. It was a group of residents who lived
8 fairly close to the site.

9 Q. All right. And they were opposed to the
10 development that you proposed?

11 MR. INGRAM: Objection. Calls for
12 speculation.

13 Q. You just said they were in opposition.
14 They were in opposition to the plan that you
15 presented --

16 A. I'm hesitating --

17 Q. -- in Exhibit 1 and 2?

18 MR. INGRAM: Same objection.

19 A. I think they're -- you said that you --
20 I think they're opposed to everything.

21 Q. All right. Start again. This WARD
22 group, a group of citizens that you met with,
23 after filing Exhibit 1 and 2, were opposed to
24 that application, right?

1 MR. INGRAM: Objection. Calls for
2 speculation.

3 A. Members of that group certainly
4 expressed that in the meetings.

5 Q. Well, it doesn't call for speculation,
6 Tom, does it? You were there for hours, weren't
7 you?

8 MR. INGRAM: Objection. Asked and
9 answered and now you're getting argumentative,
10 Counsel.

11 MR. SCHUMACHER: You're objecting as
12 speculative. I'm asking the witness.

13 Q. It's not speculative, Tom. You were
14 present at the meeting. You heard their
15 opposition to the plan that you had -- the
16 application you'd made, right?

17 A. I think I answered.

18 Q. Right, but you heard their -- they
19 were -- you heard their opposition, correct?

20 MR. INGRAM: Same objection.

21 A. Yes. I answered yes.

22 Q. And that frustrated you, didn't it?

23 MR. INGRAM: Objection.

24 A. Are you asking me whether their

1 opposition or their comments frustrated me?

2 Q. Both.

3 A. No.

4 MR. INGRAM: Objection to form.

5 Q. You're a zoning lawyer, right? You've
6 done this before.

7 A. Correct.

8 Q. You're used to this kind of opposition,
9 aren't you?

10 A. I'm used to opposition. I'm not used to
11 getting yelled at for two and a half hours,
12 three hours.

13 Q. What were they yelling about?

14 A. I don't remember the exact vitriol,
15 subject matter of the vitriol. I just remember
16 being -- experiencing it for about three hours.

17 Q. You mentioned that in one of the
18 hearings that you testified at.

19 A. Correct, yeah.

20 Q. In this -- these were citizens of the
21 city of Worthington who were expressing
22 opposition about the application that you made.

23 MR. INGRAM: Objection.

24 Q. We're clear on that, right?

1 MR. INGRAM: Objection to form.

2 You may answer to the extent you can.

3 A. Yeah, it went beyond that, though. I
4 mean, they were opposing capitalism and, you
5 know, private property -- use of private
6 property in general. I mean, they were
7 expressing views that they should be able to use
8 the property for their own purpose. So it was
9 not just -- you keep asking about, you know, the
10 opposition to the application. It was more than
11 that. It was quite philosophical.

12 Q. Okay. But there were citizens who spoke
13 at those meetings with you that were opposed to
14 specific items that were in the application,
15 right?

16 A. Yes.

17 Q. Like density of apartments, that was
18 raised, wasn't it?

19 A. I can't sit here today and tell you
20 exactly what they said at that time.

21 Q. The hundred or so residents who sent
22 emails or questions to Lee Brown, were those
23 people by and large opposed to the application
24 that you made or were they in favor of it?

1 MR. INGRAM: Objection. Vague and
2 ambiguous.

3 You can answer to the extent you can.

4 A. I don't -- I can't give you -- I mean,
5 there was both.

6 Q. Okay. And in your experience that's the
7 kind of thing you'd expect, right, residents who
8 are for or against a particular development
9 proposal?

10 A. Yes.

11 Q. So the city of Worthington was no
12 different. There were people who wanted this
13 development as you proposed it in Exhibit 1 and
14 2, and there were people who didn't?

15 A. Yes.

16 Q. Were you aware that there were members
17 of city council who were in favor of the
18 application that you had made and those who were
19 opposed to it?

20 MR. INGRAM: Objection to form.
21 Compound. Ambiguous.

22 A. Aware of opposition, yes. Aware of some
23 who wanted to see the process move forward and
24 there be open deliberations and negotiations

1 and -- you know, like you'd expect with any
2 planned district filing, they wanted a fair
3 process. You know, that was clear.

4 Q. Is there any particular member of
5 council that you recall who was against the
6 proposal that you had applied for?

7 A. Yes. I mean, I saw social media posts
8 by Mr. Robinson, and then I saw similar items by
9 Mr. Smith. I mean, I can't tell you exactly
10 when and where, but I knew they wanted a park.

11 Q. What about members of city council who
12 were in favor of the application that you had
13 filed?

14 MR. INGRAM: Objection to form. Is that
15 a question?

16 A. In favor is a mischaracterization I
17 would say. I'd say there were people like
18 Bonnie Michael and I forget the other lady's
19 name who wanted the process to go forward and
20 there be, as I said, fair, open deliberations,
21 discussions, you know, the process you'd expect
22 in any municipality.

23 Q. Okay. You did have discussions with the
24 municipalities certainly at the two MPC meetings

1 that you attended to make your presentations,
2 right?

3 MR. INGRAM: Objection to form.

4 A. I'll answer by saying I don't think
5 they're really discussions in the sense of
6 two-way, you know, feedback and communication.
7 I think they were more me trying to pull out
8 information from them and what -- you know, me
9 trying to -- in the end I tried to force them to
10 work with us.

11 Q. And you also had the opportunity to meet
12 regularly with and communicate regularly with
13 Lee Brown who was the city planning director,
14 didn't you?

15 MR. INGRAM: Objection. Assumes facts
16 not in evidence.

17 A. I talked and met with Lee on basically
18 housekeeping items.

19 Q. It's fair to say that you communicated
20 with Lee Brown at least monthly, if not more
21 often, from October of 2020 when you filed your
22 initial application until the time that it was
23 eventually decided by city council in December
24 of '21?

1 MR. INGRAM: Same objection.

2 A. There was communication monthly. There
3 was times we didn't communicate monthly. There
4 were times we did more than communicate monthly,
5 yes.

6 Q. Lee Brown sent you a copy of the agenda
7 for the municipal planning commission meetings
8 before they occurred, didn't he?

9 A. I don't recall.

10 ==0==

11 (Hart Exhibit 5 marked.)

12 ==0==

13 BY MR. SCHUMACHER:

14 Q. Have you had a chance to review
15 Exhibit 5?

16 A. Not entirely.

17 Q. Oh, sorry.

18 A. Yes.

19 Q. Is this an email -- an accurate email
20 exchange between you and Lee Brown, the director
21 of the city of Worthington's planning and
22 building department?

23 A. Yes.

24 Q. And this exchange occurred on

1 November 13th, 2020?

2 A. Yes.

3 Q. So within six weeks or so of your
4 application you and Tom [sic] were already
5 discussing an agenda for apparently a
6 presentation to the municipal planning
7 commission?

8 A. I don't interpret it that way.

9 Q. Oh, how do you interpret it?

10 A. Looks to me like an agenda for a meeting
11 with their professional staff.

12 Q. Did that meeting occur?

13 A. Not sure if it occurred relating to
14 this. We had meetings with them, but I'm not
15 sure if it occurred related to this email.

16 Q. Well, those types of meetings that did
17 occur with the city of Worthington are typical,
18 aren't they? It's the kind of thing you do.

19 MR. INGRAM: Objection to form.

20 You can answer to the extent you can.

21 A. I always ask for them. I always ask for
22 those types of meetings, yes.

23 Q. But you had them in this case, didn't
24 you, with Lee Brown and his staff?

1 A. well, I didn't have any with Matt
2 Greeson who's in here so I'm -- you know, we had
3 meetings with Lee Brown and some of the other
4 staff.

5 Q. You met with them on traffic, didn't
6 you?

7 A. we had a separate zoom call on traffic,
8 yes.

9 Q. You had a meeting regarding the parks
10 director to talk about trees, didn't you?

11 A. I don't recall that one.

12 Q. Do you recall receiving a list of
13 questions from city council about your
14 application?

15 A. Yes, much later. I mean, I would say
16 that was right before the council hearing at the
17 end of my involvement.

18 --0--

19 (Hart Exhibit 6 marked.)

20 --0--

21 BY MR. SCHUMACHER:

22 Q. Have you had a chance to review
23 Exhibit 6?

24 A. Yes.

1 Q. Is that a true and accurate copy of an
2 email exchange you had between Lee Brown, the
3 director of city of worthington planning and
4 building, and yourself between December 3rd,
5 2020 and December 7th, 2020?

6 A. Yes.

7 Q. Would you agree that Lee sent you a list
8 of questions from city council concerning your
9 application on or about December 3rd of 2020
10 within a few weeks of your application?

11 A. I'm not sure. I mean, there's no
12 attachment.

13 Q. It says please see attached.

14 A. Yeah, but I don't know what the
15 attachment is. But I recall answering those
16 questions in writing, but I don't know when that
17 was. I think it was much later. I'm not sure
18 we did that at this time.

19 Q. Do you see that he's asking you about
20 who at your engineering -- or Lifestyle's
21 engineering company would be reaching out to
22 their traffic consultants and the city engineer?

23 A. Yes.

24 Q. That's a normal process when working

1 with a city on an application, isn't it?

2 A. Yes.

3 Q. If you look up -- sorry, if you look at
4 the first page, then, you proposed that your
5 team was ready to meet on traffic as of
6 December 7th, 2020, right?

7 A. Yes.

8 Q. And you proposed that you schedule a
9 second meeting with the city's park director and
10 arborist about Tucker Preserve and park planning
11 and trees?

12 A. Yes.

13 Q. And again, that's a normal process that
14 you would engage in when working with a
15 municipality on an application like Exhibit 1
16 and 2, right?

17 A. It's a normal expectation you would have
18 to work with them and work through details like
19 that, yes.

20 Q. So you'd agree with me that at least as
21 of this time the city was working with you on
22 the application, wouldn't you?

23 A. No.

24 Q. No? The city -- you don't think that

1 working with the city on traffic and trees is
2 consistent with the city who's working with you
3 on your application?

4 A. If they would have done that, but they
5 didn't.

6 Q. Are you saying that meeting didn't
7 occur?

8 MR. INGRAM: Objection.

9 Q. I'm sorry, I didn't let you answer.

10 MR. INGRAM: Let the witness complete
11 his answer. And Counsel, you're getting
12 argumentative with him.

13 A. We had a meeting on traffic. There was
14 no substance that came out of it. It wasn't a
15 meeting that moved anything forward or decided
16 anything. It was purely kind of a form, you
17 know, a meeting to talk about issues that never
18 went anywhere. No conclusions, no findings, no
19 request from the city to do anything.

20 Q. Did Lee Brown or anyone from the city
21 staff indicate any problems that they saw with
22 the application that you had made?

23 MR. INGRAM: Objection to form. Vague
24 and ambiguous.

1 To the extent you can answer, go ahead.

2 A. His comments are a matter of record in
3 the staff reports.

4 Q. You've read his staff report?

5 A. I did previously.

6 Q. Did you read it in preparation for your
7 deposition today?

8 A. No.

9 Q. You'd agree with me, wouldn't you, that
10 the staff report that Lee Brown wrote points out
11 some of the positive things about your
12 application, doesn't it?

13 MR. INGRAM: Objection to form.

14 You can answer to the extent you can.

15 A. To the -- I mean, to the extent I can
16 remember something -- reading something like
17 that years ago, the second -- the second staff
18 report for the resubmittal filing that was done
19 later, it did point out things that have been
20 improved from the first filing.

21 Q. It also pointed out deficiencies related
22 to the comprehensive plan, didn't it?

23 MR. INGRAM: Same objections.

24 A. I don't remember the details of that.

1 Q. I just want to make sure I understand
2 your answer. So you don't recall that the staff
3 reports that were written by Lee Brown and
4 staff, you don't recall that they pointed out
5 deficiencies in the application as compared to
6 the city's comprehensive plan?

7 A. You're asking me about documents that
8 are now, you know, what, two and three years
9 old. So exactly what was in them, what they
10 said, I can't remember that.

11 Q. Okay. We can pull them out, but all I'm
12 asking you is didn't Lee Brown fairly present
13 positive and negative points about your
14 application in his staff review for the
15 municipal planning commission?

16 MR. INGRAM: Objection. Asked and
17 answered.

18 A. You use the word fairly. I would not
19 agree with that. I didn't agree with his
20 analysis of the comprehensive plan.

21 Q. But you do respect Lee Brown as a
22 professional?

23 A. Of course.

24 Q. And you've worked with him before and

1 you've worked with him since?

2 MR. INGRAM: Objection. Misstates his
3 prior testimony.

4 A. I worked with him before this when he
5 was at the county. I don't believe I worked
6 with him since.

7 Q. Okay.

8 MR. INGRAM: Counsel, we've been going
9 for about an hour now. If you get to a point
10 where we could take a break, I would appreciate
11 it.

12 MR. SCHUMACHER: Let's do it now and
13 I'll get the staff report out.

14 MR. INGRAM: Okay.

15 (Recess taken.)

16 BY MR. SCHUMACHER:

17 Q. Did you have a chance to talk to
18 Mr. Ingram at the break?

19 A. Yes.

20 Q. You said that you had a chance to review
21 the codified ordinances of the city of
22 Worthington?

23 MR. INGRAM: Objection. Misstates his
24 testimony.

1 Q. well, I withdraw the question.

2 when you signed Exhibit 1, you indicated
3 that you were familiar or would familiarize
4 yourself with the codified ordinances of the
5 city of Worthington, correct?

6 A. I would have read the zoning code --
7 part of the zoning code portion of the comp
8 plan.

9 Q. well, the application requires you to do
10 that, doesn't it, as the applicant?

11 A. Not the whole codified ordinances.
12 I'm -- it was a zoning matter.

13 Q. Okay. And you were aware of the fact
14 that the city of Worthington has a referendum
15 provision in their code?

16 MR. INGRAM: Objection. Assumes facts
17 not in evidence.

18 Q. He hasn't answered the question yet.

19 A. To the extent every municipality has --
20 almost every municipality has that, yes.

21 Q. So you were aware of the fact that the
22 city of Worthington had an ordinance that --
23 actually a charter amendment that would permit
24 citizens to submit any change in zoning to a

1 referendum within 60 days?

2 MR. INGRAM: Objection. Calls for legal
3 conclusion.

4 Q. You're a lawyer, aren't you?

5 A. I'm generally aware of the referendum
6 law, yes.

7 Q. And you were specifically aware of the
8 referendum in this particular case, weren't you?

9 MR. INGRAM: Objection. There is no
10 referendum in this case.

11 Q. The referendum provision in the
12 Worthington code.

13 MR. INGRAM: Objection. Assumes facts
14 not in evidence.

15 A. I don't recall whether I actually read
16 that section of the code.

17 Q. Okay. So are you telling me that you're
18 not aware of the fact that if your application,
19 Exhibit 1 and 2, were approved by the city of
20 Worthington that it could be subject to a
21 referendum? Are you telling me you're not aware
22 of that in this case?

23 MR. INGRAM: Objection to form.

24 A. No.

1 Q. So you were aware that if your
2 application had been approved by the city
3 council of Worthington in December of '21 that
4 it could be subject to a referendum?

5 A. Yes.

6 Q. And Lifestyle was aware of that, too,
7 weren't they?

8 MR. INGRAM: Objection. Calls for
9 speculation.

10 A. I would guess so.

11 Q. Well, you know that they were aware of
12 the referendum provision in the code, don't you,
13 Tom?

14 MR. INGRAM: Same objection.

15 A. Every developer is generally aware of
16 referendum law, correct, yes.

17 Q. They retained a consultant to advise
18 them on how to beat a referendum in this case,
19 didn't they?

20 MR. INGRAM: Objection. Assumes facts
21 not in evidence.

22 A. I have no knowledge of that.

23 Q. Okay. So you're not aware of the fact
24 that they hired a communication company called

1 Griffin in October of 2019 to assist them in an
2 effort to deter a referendum attempt?

3 MR. INGRAM: Same objection.

4 A. I don't remember being involved in that,
5 and don't know why they hired a communications
6 firm.

7 Q. All I'm asking you is were you aware of
8 the fact that this developer in this case had
9 hired a consultant to assist them in deterring
10 an anticipated referendum attempt if your
11 application were approved?

12 MR. INGRAM: Objection. Asked and
13 answered.

14 A. Yeah, that's not something I was
15 involved in.

16 Q. That's all I want to know.

17 A. Yeah.

18 Q. But were you aware of the fact that
19 they'd done that? That's my question.

20 MR. INGRAM: Same objection. Asked and
21 answered now for the third straight time.

22 A. I don't remember exactly, you know, if I
23 knew about their hiring of Griffin, but I
24 certainly didn't know what they were hired for.

1 I didn't know what -- if you're -- you keep
2 asking me about was -- you know, were they hired
3 to do deal with the referendum. I don't know
4 that. I wasn't involved in that.

5 Q. Okay. Do you know the firm -- the
6 Griffin firm?

7 A. I know of the firm.

8 Q. Have you worked with -- I mean, have you
9 worked with them before?

10 A. No.

11 Q. Have you seen any of the reports that
12 they completed in 2019 about this issue?

13 A. I don't think so. I don't remember
14 that.

15 Q. But it's not unusual in your experience
16 that a developer would retain such a consultant
17 to assist them in winning a political fight over
18 something like a referendum, right?

19 MR. INGRAM: Objection. Calls for
20 speculation. Incomplete hypothetical.

21 A. I've worked for a lot of developers.
22 It's pretty -- that would be rare that they
23 would hire somebody, you know, to -- before
24 filing an application they hire somebody to deal

1 with the referendum.

2 Q. Let me ask you this question then.

3 Knowing what you knew in 2020 when you filed
4 this application, wouldn't you expect a company
5 like Lifestyle Communities to do that, to retain
6 a consultant to deter a referendum?

7 MR. INGRAM: Objection. Calls for
8 speculation. Incomplete hypothetical.

9 You can try to answer this if I can.

10 A. I don't know.

11 Q. All right. So all I want to know is
12 when you're testifying in front of this jury
13 you're not aware of whether Lifestyle --
14 withdraw that.

15 would you agree with me that in 2020
16 when you filed this application you knew that
17 there was strong public opposition to the
18 Lifestyle Communities' plan?

19 MR. INGRAM: Objection. Asked and
20 answered earlier this morning several times.

21 A. I think that's right.

22 Q. But you were aware of that, weren't you,
23 that there was strong opposition in the
24 community?

1 MR. INGRAM: Same objection. It
2 misstates this witness's prior testimony.

3 A. You keep saying at the time I filed.
4 Okay.

5 Q. Yeah.

6 A. The opposition became clear after that.
7 The opposition that I was involved in became
8 clear after that, not before I filed.

9 Q. Okay.

10 A. I didn't have public meetings with
11 people before I filed.

12 Q. Okay. Did you know that council
13 president Robinson introduced an idea to either
14 do away with or revise the comprehensive plan in
15 September of 2020 just weeks before you filed
16 your application?

17 A. You're asking me was I aware of it then?

18 Q. Yes.

19 A. I'm not sure. I'm not remembering when
20 I knew that. I definitely know about it, but
21 when I became aware of it is -- he tried to do a
22 lot of things, I mean.

23 Q. And as an elected official he had every
24 right to express his opinion as an elected

1 official, doesn't he?

2 MR. INGRAM: Objection. Calls for legal
3 conclusion.

4 Q. Does he?

5 MR. INGRAM: Same objection.

6 Q. Doesn't he?

7 MR. INGRAM: Same objection.

8 A. Any councilmember has a right to say
9 what they believe.

10 Q. Thank you.

11 Lee Brown advised you in September of
12 2020 that city council had been considering
13 revising their comprehensive plan?

14 A. I don't remember, you know, the timeline
15 of a discussion like that.

16 Q. Your plan was not to file this
17 application, Exhibit 1 and 2, until November or
18 December of 2020, right?

19 A. I wouldn't agree with that. I don't
20 know. I don't know what you mean.

21 --0--

22 (Hart Exhibit 7 marked.)

23 --0--

24

1 BY MR. SCHUMACHER:

2 Q. Have you had a chance to review
3 Exhibit 7?

4 A. Yes.

5 Q. Who is Randy Arndt?

6 A. I know him as an Ice Miller attorney who
7 I believe at the time was representing the
8 children's home.

9 Q. UMCH?

10 A. Yes.

11 Q. You knew that you needed a signature
12 apparently on the application from the actual
13 property owner at that time, right?

14 A. Yes.

15 Q. Looks like you were scurrying quickly to
16 get that done on the same day, right?

17 MR. INGRAM: Objection. Misstates the
18 document.

19 MR. SCHUMACHER: Let's let him describe
20 the document, Counsel.

21 MR. INGRAM: Same objection.

22 Q. You say, Randy, I followed up with calls
23 to your office and cell now just in an effort to
24 touch base in this matter. Please give me a

1 call at your earliest convenience.

2 A. Well, I'll tell you that I don't agree
3 with your comment scurrying. I mean, that's a
4 little much.

5 Q. Well, you heard from Tom -- from Lee
6 Brown that council had been considering amending
7 the comprehensive plan in September, right?

8 A. I'm not sure about that. I don't
9 remember that.

10 Q. Okay. Fine. And despite the fact that
11 you wrote to Lee Brown that you intended to file
12 the application in November or December, you,
13 after learning that city council might amend the
14 comp plan, worked as quickly as possible to get
15 signatures on your application and file it by
16 October 2nd?

17 MR. INGRAM: Objection to form. Assumes
18 facts not in evidence. Compound.

19 A. No.

20 Q. That's what happened, isn't it?

21 MR. INGRAM: Same objections.

22 A. No.

23 Q. Okay. So when you wrote at the bottom
24 of page 2 that based on your developing legal

1 position and the property rights involved, it
2 has become essential at this time that we are in
3 a position to file our applications timely and
4 as necessary at our discretion. That's what you
5 wrote?

6 A. Your question is did I write that?

7 Q. Yes.

8 A. Yes, I wrote that.

9 Q. And you believed it at that time, didn't
10 you?

11 A. What I was trying to do is get Randy to
12 pay attention to this and return my call and
13 sign -- get an application signed.

14 Q. And you needed to do that to protect
15 your legal position and property rights?

16 MR. INGRAM: Objection. Calls for legal
17 conclusion.

18 A. There's a process internally with any
19 developer when you work on an application,
20 especially one that thick, where you do all the
21 work, they spend all the money, and you decide
22 you're going to file. When you file -- when you
23 decide you're going to file, you want to make
24 the next filing deadline because that puts

1 you -- you know, their deadlines are typically
2 monthly, really, in any municipality. I believe
3 worthington's the same. So you file by date
4 certain, gives you a hearing by date certain.

5 So I am regularly in the process of
6 trying to get a property owner or, you know,
7 somebody else's lawyer, a seller's lawyer who my
8 clients are in contract with to file these
9 applications, and it typically is a fire drill
10 at the end in every case, and I don't see this
11 one any different.

12 Q. But you don't always write that you're
13 doing so in order to protect your client's
14 developing legal position and property rights,
15 do you?

16 A. Do I -- are you asking me do I always
17 write that?

18 Q. Do you often write that?

19 A. There are times when I use that kind of
20 phrase, yeah. They're definitely --
21 definitely -- do I need to create a sense of
22 urgency to get sellers' lawyers to understand my
23 deadlines in my world of zoning and timing and
24 hearings and application requirements, yes.

1 Q. But based on what you knew and learned
2 from Lee Brown about the city council's
3 intention to reconsider its own comprehensive
4 plan, you wanted to get this application filed
5 in order to protect your client's legal rights,
6 didn't you?

7 MR. INGRAM: Objection. Asked and
8 answered several times now, Counsel.

9 Q. I just want to know what you're going to
10 tell the jury.

11 MR. INGRAM: And he's already answered
12 that multiple times.

13 A. A rather compound -- can you maybe read
14 the question again or ask it -- there were a
15 couple questions in there.

16 Q. You did know about city council's
17 attempt to reconsider their comprehensive plan
18 in September of 2020. We talked about that,
19 right?

20 MR. INGRAM: Objection. Misstates the
21 prior testimony.

22 Q. It's a simple question, Tom. Did you
23 know about that or not?

24 A. No.

1 Q. Did Lee Brown tell you or not?

2 A. No, I don't think he did.

3 Q. So if Lee Brown testifies that he told
4 you that city council had been reconsidering the
5 comprehensive plan, that's not true?

6 MR. INGRAM: Objection. Argumentative.
7 Asked and answered. Time to move on, Counsel.

8 A. I'll just say your question is always
9 going back to a specific date and time.

10 Q. Okay.

11 A. Lee and I -- there were -- there were --
12 that threat was, you know, stem to stern
13 throughout this whole process the whole time.
14 Robinson was throwing stuff out in social media.
15 Lee and I were talking about it. If you're
16 trying to paint the picture that like in
17 September right then Lee called me and this made
18 me run and try to get a filing done, I'm
19 saying -- I'm telling you that is not accurate.

20 Q. Okay.

21 A. Because your question always goes back
22 to that September date. Sure, I definitely
23 think Lee and I talked about different things
24 different councilpeople were talking about.

1 Councilpeople talk about everything all the
2 time, but it's not what motivated the filing of
3 the application. It's not how you're
4 characterizing it.

5 Q. Do you recall Lee Brown telling you to
6 go back and look at the recent city council
7 meeting in September of 2020?

8 A. No, I don't remember that.

9 Q. And do you recall telling him that you
10 would do that?

11 A. No, I don't remember it.

12 Q. And -- okay.

13 The application, Exhibit 1 and 2, was
14 eventually considered at the municipal planning
15 commission meeting on January 14th, 2021?

16 A. You're asking about the initial
17 application or the resubmittal? I'm unclear. I
18 just want to get the right date.

19 Q. I'm sorry. I jumped ahead. Yes. In
20 September of '21 you revised Exhibit 1 and 2
21 somewhat.

22 MR. INGRAM: Objection to form. Is
23 there a question pending?

24 Q. Do you recall submitting a revised

1 concept plan to the city of worthington in
2 September of 2021? I'm sorry. Yeah, September
3 of 2021?

4 A. Yeah, the dates -- I remember the
5 resubmittal. The dates are -- I would take your
6 word for it if you have a document that says
7 that date.

8 Q. I'm going to hand you what we'll mark as
9 Exhibit 8.

10 ==0==

11 (Hart Exhibit 8 marked.)

12 ==0==

13 MR. INGRAM: Counsel, there is a lot of
14 exhibits going back and forth. What is being
15 marked as Exhibit 8?

16 MR. SCHUMACHER: This document.

17 (Discussion off the record.)

18 BY MR. SCHUMACHER:

19 Q. Have you had a chance to review
20 Exhibit 8?

21 A. Yes.

22 Q. And the third page of that is your
23 letter submitting a revised concept plan to the
24 city of worthington?

1 A. Yes.

2 Q. And attached to that is a portion of
3 that revised plan, isn't it?

4 A. Yes.

5 Q. Your letter at page 3 of the document
6 indicates that as discussed the applicant wishes
7 to present this revised concept site plan at the
8 October 14th Worthington planning commission,
9 right?

10 A. Yes.

11 Q. Did you have discussions with Lee Brown
12 about this application prior to writing this
13 letter?

14 A. I believe so. I don't remember exactly
15 when, but it appears that I did.

16 Q. You revised the plan for your client to
17 change the mix and location of uses, right?

18 MR. INGRAM: Objection to form.

19 A. It was -- yes, it was -- we were in a
20 team inside the client with professionals,
21 engineers, architects. The client was a team,
22 wasn't just me.

23 Q. So you were communicating with people at
24 Lifestyle Communities about modifications to the

1 original application?

2 A. Correct.

3 Q. Was that in response to feedback that
4 you had gotten from either your outreach or the
5 community?

6 A. Not entirely just that, but yeah -- in
7 part, yes.

8 Q. If I read this correctly, the amount of
9 residential density was reduced from 730
10 residential units to 600?

11 A. I remember about a 20 percent reduction
12 in residential.

13 Q. The document that has -- the Bates
14 number at the bottom is Worthington 3250. Are
15 you on that page?

16 A. Yes, sir.

17 Q. The development summary shows that the
18 revised concept plan reduced the amount of
19 residential units to 22 single-family lots, 86
20 three-story townhouses, 72 three-story townhomes
21 flats for rent, and 420 multi-family units,
22 right?

23 A. Yes.

24 Q. And if I can do my math correctly,

1 that's 600 residential units. If you're trying
2 to do math as a lawyer, we have issues.

3 A. We have issues.

4 That's generally accurate.

5 Q. No, it is accurate, isn't it? It's 600
6 residential units.

7 A. Well, if you're going to make me do the
8 math, I will.

9 Q. Yeah, I want to make sure that we have
10 an accurate count.

11 COURT REPORTER: Should we note the
12 witness is writing on the exhibit?

13 MR. SCHUMACHER: Fine with me. Thanks
14 for noting that.

15 A. I get 600.

16 Q. All right. So in response to -- or at
17 least partially in response to community
18 feedback your client reduced the residential
19 density from 730 units as originally proposed to
20 600 residential units, right?

21 A. Yes.

22 Q. And you testified at hearings that that
23 was about a 19 percent reduction in residential
24 units?

1 A. Was -- I think it was 19 and change, but
2 yes. Close to 20.

3 Q. And you were aware of the fact that back
4 in 2015 Lifestyle Communities had proposed a
5 residential density that was in the range of 530
6 residential units?

7 MR. INGRAM: Objection. Asked and
8 answered and misstates this witness's prior
9 testimony.

10 Q. So you don't -- are you saying you're
11 not aware of the fact that Lifestyle Communities
12 made an informal proposal to a group of citizens
13 like this that proposed 520-some residential
14 units?

15 A. No.

16 MR. INGRAM: Same objections.

17 Q. You're not aware of that?

18 A. I never looked at the number.

19 Q. That's fine.

20 A. There was no reason for me to look back.
21 You know, what was that?

22 Q. 2015.

23 A. Yeah, almost six years. Never an
24 application filed.

1 Q. In all of your community outreach and
2 after listening to the comments of the public at
3 MPC meetings and city council meetings you did
4 learn that many community residents were opposed
5 to the residential density of all of the plans
6 that Lifestyle Communities proposed, right?

7 MR. INGRAM: Objection. Calls for
8 speculation.

9 A. There's 14,000 or so people in the
10 community. Some of the people we met with were
11 opposed to that. Some thought it was very
12 positive.

13 Q. And at the meetings that you attended
14 the vast majority of those who spoke from the
15 public were opposed primarily to the residential
16 density that your client proposed?

17 MR. INGRAM: Objection. Calls for
18 speculation. Ambiguous and --

19 MR. SCHUMACHER: We'll get to it, don't
20 worry.

21 MR. INGRAM: -- compound. If you've got
22 a document, give the witness the document then.

23 Q. You're the attorney for the applicant.
24 You were aware of those facts, weren't you?

1 MR. INGRAM: Objection. Assumes facts
2 not in evidence.

3 MR. SCHUMACHER: Let him answer the
4 question, Chris.

5 A. Which question --

6 MR. INGRAM: Counsel, let me pose my
7 objection.

8 MR. SCHUMACHER: Okay. Are you done?

9 MR. INGRAM: Yes.

10 Q. Can you answer the question?

11 A. Which question?

12 MR. SCHUMACHER: Could you read the
13 question back?

14 (Record read back as requested.)

15 MR. INGRAM: Same objections.

16 A. There were lots of different reasons
17 that people expressed opposition, many different
18 reasons.

19 Q. We'll do it that way. If you could look
20 at Exhibit 59. Before we get going, let me just
21 ask you this about Exhibit 59. Is that a
22 document you reviewed in preparation for your
23 deposition today?

24 A. No.

1 Q. Is that a meeting that you -- you
2 mentioned watching a video of a meeting. Is
3 that one of the meetings that you watched?

4 A. Let me see.

5 MR. INGRAM: Counsel, if you could give
6 him an opportunity to review Exhibit 59.

7 MR. SCHUMACHER: I know. He's doing
8 that.

9 A. Could you repeat the question. I'm
10 sorry.

11 Q. Is this one of the meetings that you
12 said you reviewed, in preparation for your
13 deposition, on video?

14 A. Yes.

15 Q. Do you believe that this is a true and
16 correct copy of the minutes of the regular
17 meeting of the Worthington Architectural Review
18 Board and municipal planning commission on
19 January 14th, 2021?

20 MR. INGRAM: Counsel, if he could have
21 enough time to review the exhibit before you
22 start asking questions.

23 Q. You can read every page if you'd like.

24 A. Could you go back to that question?

1 (Record read as requested.)

2 A. Yes.

3 Q. Do you stand by the comments that you
4 made during this meeting and that you reviewed
5 on the video?

6 A. Yes. I think they speak for themselves.
7 The testimony is what it is.

8 Q. Okay. Thank you.

9 If you could turn to Exhibit 83. Have
10 you had a chance to review Exhibit 83? Is that
11 a true and accurate copy of the minutes of the
12 meeting of October 14th, 2021 that you attended?

13 A. Yes.

14 Q. Would you stand by the statements that
15 you made at that meeting?

16 A. Yes.

17 Q. And do you recall hearing the comments
18 from the members of the municipal planning
19 commission as well as the members of the public
20 who spoke?

21 A. I will admit on the record that when I
22 listened to the tape again, I fast forwarded
23 some of that.

24 Q. You skipped over all of the negative

1 comments that you received for your proposal.

2 Is that what you're telling me?

3 MR. INGRAM: Objection to form.

4 A. I didn't say all.

5 Q. Well, you didn't want to relive it. Is
6 that what you're saying?

7 MR. INGRAM: Same objections.

8 Q. That's a question. You didn't want to
9 relive that, Tom, did you?

10 A. Fair -- fair question.

11 Q. Now, you were told specifically by
12 members of the MPC that, quote, Tom and Bo, I
13 have met with both of you on multiple occasions.
14 Bo, I have met with your predecessor. This is
15 Mr. Myers speaking. You remember that comment?

16 MR. INGRAM: Counsel, you're reading off
17 the document. Can you point to where?

18 Q. This is a transcript that I prepared
19 from the video recording, and I'm asking you do
20 you recall that comment by Mr. Myers?

21 A. Generally I remember Scott -- you know,
22 kind of the thrust of his comments.

23 Q. Do you remember him saying for the last
24 seven years I believe I have tried to be very

1 straightforward and blunt and direct and
2 consistent in what I thought Worthington wanted
3 from this development? Do you recall that
4 comment, that type of comment from Mr. Myers on
5 October 14th, 2021?

6 A. You're asking me do I remember him
7 saying that?

8 Q. Yeah.

9 A. Yes.

10 Q. Do you remember him telling you that one
11 thing that they've asked from you repeatedly,
12 meaning you and your client, is that they've
13 never been able to get an answer to is what are
14 the economics of this? Do you recall him
15 bringing that up?

16 A. I'll answer by saying that was the
17 questions we were asking them as well.

18 Q. Well, didn't he tell you that when you
19 first presented the project to us there were
20 certain -- a certain number of apartments and
21 now that's ballooned? You remember him saying
22 that?

23 A. I don't remember him specifically saying
24 that.

1 Q. Okay. What are the economics, Tom?

2 MR. INGRAM: Objection to form.

3 Ambiguous.

4 To the extent you can answer, you may do
5 so.

6 Q. As we sit back in October of '21 and
7 you're at that meeting, what did you know about
8 the economics of the proposal when it came to
9 the density of apartments that Mr. Myers was
10 raising?

11 MR. INGRAM: Same objection.

12 A. What I knew about the economics was from
13 outreach I did with, you know, sources in the
14 commercial real estate industry, particularly
15 the folks I know at Colliers, and you know,
16 about office and about what it takes to attract
17 office. And you know, this -- and I believe I
18 said this to Worthington in testimony. This was
19 office-mageddon, this was post COVID, extremely
20 challenging office environment. This had never
21 been a class A office site in the view of the
22 market, in the view of people like me, people
23 like Colliers, you know, people like Lifestyles.

24 I knew the economics of the site were

1 that residential had to lead people back to
2 offices, residential mixed use, vibrancy,
3 restaurants, entertainment spaces. There had to
4 be something more than just building an office
5 to make the project successful. We wanted this
6 project to succeed. Some of the greatest
7 satisfaction I have in my life professionally is
8 seeing projects I work on succeed. That was my
9 job. That's what Worthington's comprehensive
10 plan calls for. They don't want something there
11 that would fail.

12 So the key economic point that you're
13 asking me and I'll tell you is residential had
14 to lead. Now, what quantum of residential would
15 bring those people back into an office where
16 people could live, work, play, the typical mixed
17 use environment we probably talked about at
18 Nauseam, Kingsdale, Grandview Yard. You know,
19 you can go around the horn and see this in many
20 different forms and examples, scales and sizes.
21 We tried to ask them over and over and over
22 again what they thought would work. We wanted
23 to get to that point. We wanted to get to the
24 sweet spot of what can they accept, what do they

1 think will work, what we think -- what we think
2 in the market. That was the very nature of this
3 filing. It was a planned district filing.
4 Planned district law in Ohio you expect
5 negotiation, you expect true, fair back and
6 forth deliberation. We never got that. They
7 would never -- they would never tell us a
8 number. They would never even hint at what they
9 as a professional municipal staff or council
10 leaders would find acceptable.

11 It's ironic that Scott did that and
12 asked that question because that was our
13 question. And it was a little bit, you know,
14 cagey on his approach to ask that question,
15 because that was a question we continually asked
16 them and tried real hard to get to, and they
17 would never answer that.

18 So, you know, the second filing we did
19 was a shot to try to introduce -- you know, to
20 show movement, to increase the office, to
21 increase the commercial, to lower the
22 residential, to put the density where the comp
23 plan called for density on High Street, to put
24 the residential behind that. We almost hid the

1 residential behind, you know, to make it less
2 dominant, less prominent than the commercial,
3 the office, the inviting restaurant spaces, and
4 they just wouldn't work with us.

5 I've been doing this 25 years. You have
6 an expectation to go into a community, read
7 their comprehensive plan, understand what they
8 want and deliver it. That's our job, but -- and
9 we did. That's exactly what we did. And the
10 second plan was better after we got feedback,
11 but they would never tell us.

12 And Scott's question positioning like we
13 were the ones not divulging something was --
14 was -- smart guy, good guy, but it was
15 sophistry. And after all that work and all that
16 time it was -- that was tough. That was tough
17 to be told we will only deal with you in the
18 public planning commission process and then told
19 in that process we're not going to deal with
20 you.

21 So I guess that's my -- what I know
22 about economics is we were searching and
23 pleading with them to sit down with us on the
24 economic question itself. We had to have that

1 project succeed. They had to have the project
2 succeed. That's what we were trying to get to.
3 They never worked with us.

4 Q. well, we've discussed this a few times
5 already, but you knew that there was opposition
6 to the density of residential units that were
7 posed by Lifestyle all along. Can't we agree on
8 that?

9 MR. INGRAM: Objection. Asked and
10 answered.

11 A. Yeah. I mean, that would be opposition
12 to their comp plan itself which there are many
13 people opposed to that, but the comp plan said
14 residential density on that site, especially in
15 the High Street -- the High Street Edge, that
16 High Street area.

17 Q. And Lifestyle knew that there was
18 political opposition to the comp plan itself,
19 didn't they?

20 MR. INGRAM: Objection.

21 Q. That was adverse to change it.

22 MR. INGRAM: Objection. calls for
23 speculation.

24 A. I mean I knew --

1 Q. I'm not asking to speculate. I'm asking
2 if you knew.

3 A. Yeah. What I knew is like the
4 Smith/Robinson stuff that they put out in social
5 media, that they wanted it -- all through this
6 whole process they were trying to change the
7 comp plan.

8 Q. Where do you live?

9 A. Bexley.

10 Q. Okay. But you were clearly aware that
11 there were elected members of council who were
12 representing their constituents in opposing a
13 high density apartment complex on this site, and
14 that was apparent, wasn't it?

15 MR. INGRAM: Objection. Asked and
16 answered numerous times today, Counsel, and
17 misstates the evidence and his prior testimony.

18 A. I mean, I do think I answered that a
19 bunch.

20 MR. SCHUMACHER: Can you restate the
21 question, Julia.

22 (Record read back as requested.)

23 MR. INGRAM: Same objections, and
24 assumes facts not in evidence.

1 Q. You are aware of that, Tom?

2 A. I'll just say that again there were
3 14,000 people in that community. I had a lot of
4 people contact me who lived there who wanted
5 restaurant choices, who wanted the possibility
6 of different -- you know, a lot of people want
7 to downsize into an apartment and rent. A lot
8 of people want a smaller townhome they can own.
9 we had all kinds of people coming at us who
10 weren't, you know, showing up to meetings
11 telling us go, go, you know, this is great.
12 This is vibrant. We don't want to have to drive
13 out of our town to have mixed use vibrancy.

14 Q. That's not my question. My question is
15 whether you were aware at the time that there
16 were politicians in the city, elected
17 representatives, who were advocating for a
18 development not as dense as yours?

19 MR. INGRAM: Objection.

20 Q. That's all I'm asking you. You were
21 aware of that?

22 MR. INGRAM: Objection. First of all,
23 let him finish his answers before you ask --
24 reask the same question. Same objections as

1 before to this question.

2 A. Just to finish, I mean, we knew that a
3 couple members of council wanted a park and
4 really no development. We knew that there were
5 people that were -- you know, supported that
6 position. We also knew there's 14,000 other
7 people there who lots of people contacted us who
8 wanted exactly what we were proposing and wanted
9 the comp plan enacted.

10 Q. Do you have a list of those people
11 anywhere?

12 A. There's probably a bunch of contacts for
13 them back at Isaac Wiles in emails, yeah. I
14 mean, I don't have them, no.

15 Q. How would I get those?

16 A. Some of it would be email. Some would
17 be some of the -- some of the community meetings
18 I did. We had people in those community
19 meetings saying that. Some of it you could get
20 by talking to the same people in that
21 Worthington business group, some other
22 businesses we talked to. It would be from a
23 variety of sources, but it was throughout that
24 whole project.

1 Q. You understand that these 14,000 people
2 were represented by a seven member elected city
3 council?

4 A. Yes.

5 Q. And in your experience as a zoning
6 lawyer you understand that politicians try to
7 represent their constituents in different ways?

8 MR. INGRAM: Objection. Calls for
9 speculation. Incomplete hypothetical.

10 A. What I'll tell you is I'm -- I'm a
11 student for a quarter century of comprehensive
12 plans. And the comprehensive plan in most
13 communities is the essence of what the community
14 wants and their aspirations for development and
15 future growth, and you know -- and in this case
16 for a specific site which is pretty rare that a
17 comp plan gets this detailed. So I think it was
18 after about a year of their process to come
19 up -- which isn't unusual. Most comp plans with
20 all the outreach they do take that long. They
21 came up with a comp plan, and we filed
22 applications that met it. So you know, the
23 expectation is you file an application that
24 meets the comp plan, you're going to get --

1 you're going to have a very good chance and
2 should get an approval of that development plan
3 based on the comp plan filing, based on what the
4 comp plan says. And it's the comp plan that
5 represents not only just the sitting council's
6 viewpoints, but like the whole community over a
7 longer period of time no matter who's in office.
8 The comp plan speaks for the community's
9 aspirations on development. So it goes beyond
10 just whoever's elected at the time.

11 So I think the comp plan's more
12 important, especially here in Worthington
13 because the zoning code says you zone based on
14 the comp plan which is also pretty unusual. So
15 I would -- you know, this thing about
16 councilmembers, I mean councilmembers come and
17 go. That comp plan's been there for -- I think
18 it started in '05.

19 Q. You'd agree with me, though, that at
20 least at this October 14th, 2021 meeting all of
21 the members of the public who did speak were not
22 in favor of your proposal?

23 A. No, I don't agree with that.

24 Q. But the record speaks for itself. You

1 agree?

2 A. (Nods head).

3 Q. Okay. Back to Exhibit 59 for just a
4 moment. Flip to page 47 of 58. You see at the
5 bottom or near the bottom it says, Mr. Colter
6 said they would open the discussion to hear from
7 the 9 to 11 people to signed up to speak?

8 A. Yes.

9 Q. And you were there when these people
10 spoke?

11 A. Well, it was Zoom, I believe.

12 Q. Yeah, but you were listening to it?

13 A. Yes.

14 Q. You can, if you'd like, to read the
15 comments from those people, but I would ask you
16 would you agree that all of them were, who spoke
17 at this public meeting, against or in opposition
18 to the plan that you proposed?

19 A. Without going through and reading, I
20 mean, we had people that came to these hearings
21 that weren't opposed that wanted -- that
22 specifically said we want the community to work
23 with you. So whether it was all, I can't say
24 without reading them all.

1 Q. It's a democratic process. If you want
2 to speak, you speak. All I'm asking you -- you
3 can read these if you'd like, but I'm -- please
4 do. But every one of these people spoke in
5 opposition to your application.

6 MR. INGRAM: Objection. Asked and
7 answered.

8 Q. Go ahead. Read them all. It's your
9 deposition.

10 A. I think the record -- the record of what
11 they said would speak for itself.

12 Q. Okay. Fine. All right. Thank you.

13 After you made the presentation to the
14 MPC on January 14th of 2021 that we just looked
15 at in Exhibit 59, you could have withdrawn the
16 Lifestyle application, couldn't you?

17 A. Yes.

18 Q. You could have amended it further,
19 couldn't you?

20 A. We tried to.

21 Q. Right. And that was --

22 A. But we weren't able to.

23 Q. Well, you did. You did in September
24 when you submitted the revised concept plan that

1 we just marked I think as Exhibit 8?

2 MR. INGRAM: Objection. Misstates the
3 evidence in this case.

4 A. I'm being technical, okay, as a zoning
5 attorney. Our attempt at amendment was not
6 allowed; so no, we didn't amend it. We tried
7 to.

8 Q. Did you submit a revised concept plan on
9 September 10th, 2021 to Mr. Brown?

10 A. Yeah, that was rejected in the hearing.

11 Q. But you submitted it in September is my
12 point?

13 A. Yeah, but it didn't get amended.

14 Q. And then on October 14th, 2021 it was
15 considered in the meeting that we just
16 discussed?

17 A. Yes.

18 Q. And the recommendation was denial?

19 A. Well, no, that's not what happened.

20 Q. What happened?

21 A. They rejected our attempt -- our
22 request. There was no motion; so it was
23 rejected to amend the filing. What they
24 approved -- what they recommended denial for was

1 the original application. They would not
2 cooperate with us enough to allow us to put an
3 improved plan through the hearing process. They
4 wouldn't let us amend it. So when they made
5 their recommendation was on the original
6 application.

7 Q. You're suggesting that the original
8 application was the 730 --

9 A. Correct.

10 Q. -- residential units?

11 You do recall Mr. Faust saying that he
12 wanted to avoid doing anything further and
13 really wanted to start a whole new process?

14 A. I don't remember exactly what he said.
15 I do remember him speaking and something along
16 those lines.

17 Q. Let's clean the slate and start over?

18 A. That's your characterization of what he
19 did.

20 Q. Isn't that what he said at the meeting?

21 A. what he did at the meeting was make it
22 clear that he did not believe they should allow
23 us to amend the application. when you combine
24 that with the fact that later on they told us we

1 couldn't apply for another six months --

2 Q. whoa, whoa, whoa.

3 A. well, I mean, it's all -- the whole
4 thing felt like the fix was in and we were
5 just -- we were just going through, you know, a
6 penalty phase of our relationship with them.

7 Q. well, the process that we discussed
8 early this morning was that you make a
9 presentation to the municipal planning
10 commission and they give a recommendation to
11 city council, right?

12 A. Again, I'll answer by saying in 25 years
13 I don't think I've ever had a jurisdiction tell
14 us we couldn't amend our application and, you
15 know, move forward to deliberations on something
16 that we felt was better after we got feedback.
17 That was very unusual. It was not the normal
18 course. I didn't see them doing that with any
19 other applicant, and I haven't seen it in my
20 practice generally.

21 Q. So again, the application that was
22 presented on October 14th, 2021 to the municipal
23 planning commission was the process that was
24 outlined in the zoning code of the city of

1 Worthington, isn't it?

2 MR. INGRAM: Objection. Asked and
3 answered.

4 A. I'd have to read the code to understand
5 like what their -- what their code says about
6 requested amendments. I don't have that in my
7 head.

8 Q. But you're not disputing the fact that
9 Worthington went through the process outlined in
10 their code in dealing with your application, are
11 you?

12 MR. INGRAM: Objection. Misstates his
13 testimony.

14 Q. You can sit in one chair or the other,
15 but not both.

16 A. I don't know.

17 Q. All right. You don't know. You're not
18 familiar enough with the zoning code of the city
19 of Worthington to know whether or not they
20 followed their process?

21 A. Most codes have -- some codes have
22 specifics about an amendment, you know, when an
23 applicant attempts to amend. So whether they
24 followed their code on that, I don't know.

1 Q. You do know that that application was
2 eventually considered at the December 13th, 2021
3 city council meeting which you attended?

4 A. The original application, not the
5 amendment, not what we tried to amend, yes.

6 Q. And council voted on that application?

7 A. I recall that, yes.

8 Q. You spoke at the meeting?

9 A. Yes.

10 Q. And members of the public spoke at the
11 meeting?

12 A. I believe so.

13 Q. And the vote was unanimous to deny the
14 application?

15 A. I think that's correct.

16 Q. Under the Worthington --

17 A. I'm not sure it was unanimous.

18 Q. It was.

19 A. Okay.

20 Q. Under the Worthington code -- I'll show
21 it to you. Under the Worthington code, your
22 client, the applicant, would have six months
23 from the date of the MPC denial to reapply.
24 Would you agree with me?

1 MR. INGRAM: Objection. Are you going
2 to show the witness what you said you were going
3 to show him?

4 Q. The zoning code that you said you were
5 familiar with?

6 A. Well --

7 MR. INGRAM: You just said I'll show
8 you, Counsel.

9 MR. SCHUMACHER: I'm going to show him
10 the minutes of the meeting. I'll get there in a
11 minute.

12 A. It's hard -- okay.

13 MR. INGRAM: Objection to your prior
14 question. It calls for a legal conclusion.

15 Q. Let's make sure we understand each
16 other.

17 A. Yeah.

18 Q. You were aware of the fact that if your
19 application was denied at the MPC under the city
20 of Worthington's code, you could reapply six
21 months from that date?

22 MR. INGRAM: Objection.
23 Mischaracterizes the evidence.

24 A. The issue is what exactly does that code

1 say. I can't tell you what it says. Some codes
2 say six months exact -- six months, and they
3 make a distinction with the exact same
4 application. You can't file the exact same
5 application. Some codes say you can't file on
6 the site itself. Some codes don't specify. I
7 don't know what theirs says. I just know they
8 tried to take the position that we couldn't
9 reapply, we had to wait six months, which I'm
10 not sure that was accurate, and I'm just saying
11 I don't know exactly what the code says.

12 ==0==

13 (Hart Exhibit 9 marked.)

14 ==0==

15 BY MR. SCHUMACHER:

16 Q. Have you had a chance to review
17 Exhibit 9?

18 A. Yes.

19 Q. Does that refresh your recollection of
20 your communication with Mr. Fisher about this
21 section 1145.05 of the waiting period of the
22 city of Worthington code?

23 MR. INGRAM: Objection to form.

24 A. Yeah, I don't know Mr. Fish -- the

1 Mr. Fisher you're referring to.

2 Q. I'm sorry, Mr. --

3 A. Brown.

4 Q. I was thinking of Lee Fisher.

5 A. Yeah, I know him.

6 Q. Lee Brown, yes.

7 A. I see the communication between myself
8 and Lee Brown.

9 Q. All right. This was the day after your
10 presentation to the MPC on October 14th, 2021,
11 isn't it?

12 A. Yes.

13 Q. Your application was met with both
14 public opposition and opposition from the MPC,
15 wasn't it?

16 A. Yes.

17 Q. And MPC voted to recommend denial of the
18 application to city council?

19 A. They first would not amend our
20 application, and then they recommended denial on
21 the original 2020 application.

22 Q. Actually, they wouldn't table your
23 application, right?

24 A. Well, we first requested them to amend

1 our application. I mean, I think the record's
2 real clear on that. I remember that was our
3 goal. We wanted the updated plan to be
4 considered moving forward with more hearings.
5 They first rejected that, and then the tabling
6 was for us to allow to continue with the new
7 resubmittal.

8 Q. And so the day after that happened Lee
9 Brown -- you asked what code provision is going
10 to govern the timing or timing limitation on
11 refiling that he referenced that night before?

12 A. What was your question? Was that just a
13 statement?

14 Q. Apparently the night before Lee
15 mentioned to you this refiling time deadline.

16 MR. INGRAM: Is there a question,
17 Counsel?

18 Q. Didn't that happen or not?

19 A. I don't remember that.

20 Q. This email -- all right. Let's do it
21 this way.

22 A. Refers to it.

23 Q. Let's do it this way. Exhibit 9, sir,
24 is a true and accurate copy of an email exchange

1 between you and Lee Brown on October 15th, 2021,
2 isn't it?

3 A. Yes.

4 Q. And he tells you that Section 1145.05 is
5 where this six-month waiting period is located?

6 A. Yes.

7 Q. Did you review it at that time?

8 A. Likely.

9 Q. Did you advise your client that you
10 could refile a different application with the
11 city of Worthington by April 14th, 2022?

12 MR. INGRAM: Objection. This question
13 calls for --

14 Q. I'll withdraw the question.

15 Tom, did you know at that point that
16 under the code you could file a new application
17 after April 14th, 2022?

18 A. Without looking at that section right
19 now, I don't know because those sections say
20 different things in different places.

21 MR. INGRAM: Counsel, I'll note it's
22 12:37. We've been going another hour and it's
23 lunchtime.

24 MR. SCHUMACHER: Let's finish this.

1 BY MR. SCHUMACHER:

2 Q. You're welcome to read the ordinance
3 that's currently posted on the website, if I
4 pulled the right one. I think it's 1145.05.

5 A. I'm sorry, what's your question?

6 Q. That ordinance would permit you to
7 refile after April 14th, 2022.

8 MR. INGRAM: Objection.

9 Q. Six months later.

10 MR. INGRAM: Objection.

11 Mischaracterizes the evidence.

12 A. It's hard to say, because -- what they
13 would have done, and it would be speculative,
14 because again, does this mean -- their -- the
15 code's vague. Does this mean the exact same
16 application? Does it mean an application with
17 10 fewer units? I mean, we would have been --
18 and that's always the case when something is
19 this vague. I mean, an application with 10
20 fewer units would arguably not be the same
21 application. So I don't know what they would
22 have done.

23 Q. But --

24 A. I think that means, I will say, if we

1 filed the exact same application with no changes
2 they probably would have rejected it. I don't
3 know if we filed one with 10 less apartments
4 what they would have done.

5 Q. So as you sat in your office on
6 October 15th, 2021 after hearing the public
7 opposition and having been rejected by the MPC,
8 you wondered about when you could reapply
9 because you asked Lee Brown, right?

10 A. Yes.

11 Q. Okay. And you knew at that time that
12 you could simply withdraw the application
13 altogether before it went to city council. That
14 was an option, wasn't it?

15 A. Yeah. It would have been an option,
16 yes.

17 Q. But instead Lifestyle wanted to stand on
18 its legal rights and file a lawsuit against the
19 city?

20 MR. INGRAM: Objection.

21 Q. Were you made aware of that by
22 Lifestyle, by individuals at Lifestyle?

23 MR. INGRAM: Objection. Assumes facts
24 not in evidence. Argumentative.

1 A. Obviously we didn't know what was going
2 to happen when we went to city council. So you
3 have to finish an application. That's a general
4 approach to zoning.

5 Q. So moving forward, on December 13th,
6 2021 when the application was heard in public
7 before city council and rejected by city
8 council, Lifestyle still had the opportunity to
9 refile a different application within six months
10 of the denial of the MPC.

11 MR. INGRAM: Objection.

12 Q. Can we agree on that?

13 MR. INGRAM: Objection to form and
14 mischaracterizes the evidence and this witness's
15 prior testimony.

16 A. What I've been trying to say is no,
17 because you don't know if they would have
18 accepted that. We could have tried something
19 like that, but how -- my point is that code is
20 vague. It's vague how they would have read it,
21 what they would have done with any application
22 whether it was exactly the same or we tried
23 something a little different.

24 I've been in places where if you file --

1 with a section that is similar where you file a
2 different application and, okay, the staff says,
3 well, this is different. We got to hear it.
4 Other places they won't let you do anything no
5 matter how different.

6 Q. But you were at the city council meeting
7 on December 13th, 2021 so you heard the
8 discussion, right?

9 A. Zoom, yeah.

10 Q. But you heard it?

11 A. Yes.

12 Q. And you participated in it?

13 A. Yes.

14 Q. And after that decision was made an
15 option for you and your client was to wait until
16 April of 2021 -- I'm sorry, April of 2022 and
17 file an application that was different than the
18 one that was just rejected?

19 MR. INGRAM: Objection.

20 Q. That was that legal avenue for you,
21 wasn't it?

22 MR. INGRAM: Objection. Calls for a
23 legal conclusion. Asked and answered and
24 misstates this witness's prior testimony. Calls

1 for speculation.

2 You may answer to the extent you can.

3 MR. SCHUMACHER: Is there anything else?

4 A. Well, I just -- I mean, after that whole
5 process we went through, we didn't know what
6 they were going to do.

7 Q. I know. But it was a legal option,
8 wasn't it?

9 MR. INGRAM: Same objections. He just
10 answered the question.

11 A. It was an option.

12 Q. Okay. But instead of that option
13 Lifestyle decided to file a lawsuit in March of
14 2022. You're aware of that because you read it,
15 right?

16 MR. INGRAM: Same objections.

17 A. I just don't know the exact date, but
18 that is -- a lawsuit was filed.

19 Q. That's what happened. Okay.

20 And my only question for you about that
21 is, is there anyone other than a lawyer who
22 represented Worthington -- lawyer who
23 represented Lifestyle or its affiliates who told
24 you that that was an option if this was rejected

1 at that city council meeting in December of '21?

2 MR. INGRAM: Objection. Vague and
3 ambiguous. Compound.

4 You can answer to the extent you can.

5 A. You're asking about the six-month --
6 waiting six months and filing?

7 Q. No. I'm asking you whether you were
8 aware that individuals at Lifestyle Communities,
9 not their lawyers, were intent on filing a
10 lawsuit if the application were rejected by city
11 council?

12 MR. INGRAM: Objection. Calls for
13 speculation.

14 A. I didn't see any preconceived -- I mean,
15 it was -- it was -- my job was on the zoning,
16 keep working on it. See what happens. I've had
17 many experiences where planning commission says
18 no and council approves.

19 Q. Okay. Fair enough.

20 MR. SCHUMACHER: Why don't we break for
21 lunch, and I don't think I'll have too much
22 after lunch.

23 MR. INGRAM: Off the record.

24 (Recess taken.)

1 BY MR. SCHUMACHER:

2 Q. Before we took a break, you mentioned
3 that you'd been approached by a number of people
4 who were in favor of either development of this
5 site generally or your specific plan that you
6 presented to the city of Worthington. Is that
7 right?

8 A. Yes.

9 Q. Did Lifestyle Communities ask you for
10 those emails or documents concerning those
11 contacts in response to discovery requests in
12 this case?

13 A. No.

14 Q. So you have these or Isaac Wiles has
15 them?

16 A. Maybe. I didn't compile that list. You
17 know, I just -- there were people that contacted
18 me. The majority of those people and the
19 majority of that interaction would have been
20 with the Building Worthington's Future group,
21 because those guys wanted to see the site
22 developed. They had their own opinions on
23 different aspects of it. You can -- I think it
24 might still be a website, but there's -- of

1 theirs. There's a concept called the
2 Worthington mile. That was a lot of discussion
3 with that group about how this proposal fit into
4 the Worthington mile concept. I think part of
5 their -- I think I testified about that at the
6 last MPC meeting, but they were -- that business
7 group and members of theirs -- by the way, one
8 of which testified at that same MPC meeting.

9 Q. How many -- you keep saying there's
10 14,000 people in Worthington, but we both know
11 that all of them aren't going to speak either
12 publicly or through email about any particular
13 proposal, right? You're not going to petition
14 or get an opinion from 14,000 people. We can
15 agree on that?

16 A. Yes, we can agree on that.

17 Q. And the best you can do as a political
18 body is to listen to the constituents who do
19 express their opinions?

20 A. No.

21 MR. INGRAM: Objection.

22 Q. Can we agree on that?

23 MR. INGRAM: Objection. Calls for
24 speculation. Incomplete hypothetical.

1 You may answer to the extent you can.

2 A. No.

3 Q. Based on your experience --

4 A. No.

5 Q. All right.

6 A. Here's why.

7 Q. Okay.

8 A. You can go in almost any major suburb in
9 Columbus, Columbus region, and find a
10 comprehensive plan. You could typically read
11 how the comprehensive plan took some times
12 years, typically nine to 12 months, of community
13 outreach to put together the community's vision
14 for the future of the community in terms of
15 development through the comprehensive plan.

16 So when I show up in Worthington, you
17 know, hired by Lifestyle to try to find, you
18 know, middle ground and the answer, that's the
19 starting point, you know. And with their code
20 treatment, that comp plan is more than a guide.
21 It's what you'd expect to be able to develop,
22 you know, if you're consistent with the comp
23 plan. So the community speaks on these
24 development matters through that comp plan

1 development, through the process of input,
2 through the process of writing that plan, and
3 council adopts it. So, you know, typically
4 planning commission hears the comp plan, council
5 adopts it. So yeah, the main place you get the
6 expression of the community's desire for a given
7 area, in this case a specific site, is that comp
8 plan. So that was the expectation we had, is to
9 focus on that and move through the process
10 consistent with that.

11 Q. And in your experience things change
12 after comp plans are adopted, don't they?

13 MR. INGRAM: Objection. Assumes facts
14 not in evidence.

15 A. Well, yes, and one of the things that
16 changed is we had office-mageddon. So we
17 weren't going to have -- we weren't going to
18 have -- we were going to have to have
19 residential lead people back into
20 income-producing offices and commercial
21 facilities. Residential had to be a key
22 component of whatever happened there based on
23 the change that had occurred.

24 Q. That's your opinion, right?

1 A. I'd say it's more than my opinion.

2 There's so much documentation on that, but --

3 Q. But if a comprehensive --

4 MR. INGRAM: Objection. Let him finish
5 his answer.

6 A. Yeah. I would say -- this is very
7 consistent with my testimony on this case. If
8 you went to the Kingsdale redevelopment, if you
9 went to Grandview Yard, Bridge Street, if you
10 went smaller scale to Bexley, Westerville, that
11 fact around that time is very consistent with,
12 you know, local and national market trends where
13 offices are almost shutting down. And there has
14 to be some different game plan to bring people
15 back to that.

16 Make no mistake the comp plan says that
17 has to be a site where Worthington's tax base --
18 where Worthington, you know, brings an income on
19 its tax base. And so the question is how do you
20 get there in that post-COVID environment. And
21 you know, it was -- that's why we -- that's why
22 the plan, you know, submitted was structured the
23 way it was. It had to be mixed use vibrancy
24 that got people back into the employment office

1 situations, office and commercial.

2 Q. Thank you for your opinion.

3 If public opinion was against your
4 proposal, are you saying you would not listen to
5 that public opinion?

6 MR. INGRAM: Objection. Objection to
7 form. Argumentative.

8 Q. I mean, you can't have it both ways.
9 what I'm asking is if a number of people, a
10 large number of people in a community are
11 opposed to the density of the development you're
12 proposing, are you suggesting that city council
13 or the municipal planning commission should
14 ignore that information?

15 MR. INGRAM: Objection.

16 Q. That's my question.

17 MR. INGRAM: Objection. Incomplete
18 hypothetical. Calls for speculation.

19 MR. SCHUMACHER: Anything else?

20 Q. Do you understand my question?

21 A. Give me a chance to think. Yes, I
22 understand your question.

23 Q. Thank you.

24 MR. INGRAM: Same objections.

1 A. Couple things. Number one, 25 years
2 doing this. I have never -- I don't think I've
3 ever had a case where people didn't oppose it,
4 whether it's a run-of-the-mill gas station that
5 I had last night or, you know, housing or
6 whatever. Opposition is just a fact of life. I
7 mean, people post the future of the economy and
8 they say it in public. You can't ignore it as
9 an elected official, but you can also sift
10 what's reality and what's not.

11 But the biggest tool in that whole
12 process is what the community has already said
13 where a larger body of community is involved in
14 developing the comprehensive plan. And so, you
15 know, I would answer like this, and I'd answer
16 to somebody like Mr. Robinson or Mr. Smith, you
17 don't throw away the comp plan because you got
18 opposition to whatever next development's filed.

19 So you're right, you don't discount it,
20 but you have to weigh it. And for what it's
21 worth -- and you know, Worthington is a
22 community that is kind of in danger of being
23 kind of left behind by all the other mixed use
24 and other suburb developments that are

1 occurring. But the real sad thing is that
2 site's been sitting fallow for so long now, and
3 you know, is part of that because people are
4 opposed to anything there and the leadership
5 there can't figure it out? I mean --

6 Q. That's a possibility, isn't it?

7 A. Yes.

8 Q. And that's for the citizens of the city
9 of Worthington to decide, isn't it?

10 A. Well, not only, because you know,
11 there's a property rights issue. Okay? And
12 people that own property in Worthington have
13 some rights, and you know, what happens when the
14 people of Worthington decide that a site
15 shouldn't be developed or that somebody else's
16 ground should be a park. Pretty soon who
17 they're cannibalizing rights of are themselves.

18 Q. Well, you're not suggesting that the
19 citizens of Worthington all want to make a park
20 at this location, are you?

21 A. No, but I mean, some of the vocal
22 majority -- minority of people that showed up to
23 the hearings, that was their position.

24 Q. But as you as a zoning lawyer filter

1 that information. Those are your words.

2 A. Sure.

3 Q. Okay. Just like you filter the
4 opposition expressed by, say, 300 residents who
5 may come to a public meeting expressing their
6 opposition to a development that has 530
7 residential units on the site. You filter that.

8 MR. INGRAM: Objection. Calls for
9 speculation.

10 A. Yeah, I wasn't there. I wasn't at that
11 meeting, the one you're referring to.

12 Q. Let's make it a hypothetical then.
13 You're counsel seems to think it should be a
14 hypothetical so let's make it a hypothetical.

15 If 350 people showed up at a public
16 meeting expressing overwhelming opposition to a
17 proposal at this site for 530 residential units,
18 would you consider that or filter it in your
19 words?

20 MR. INGRAM: Same objection.

21 A. With the comp plan and the code that are
22 the law?

23 Q. Yeah.

24 A. Yeah, I would filter it as well.

1 Q. And, again, your opinion is that the
2 comp plan is law, but the district court judge
3 in this case completely disagrees with that.

4 MR. INGRAM: Objection.

5 Q. You don't know that?

6 A. Yeah, that's not my --

7 MR. INGRAM: Mischaracterizes --

8 Q. Let's use that as a hypothetical. If
9 the district judge in this case said that the
10 law is that the comp plan is not binding on the
11 city, it is only a guideline, and the city
12 decides to listen to the public who's opposed to
13 do a high-dense development, don't you think
14 that's the citizen's right as well as the
15 representatives of those citizens?

16 MR. INGRAM: Objection. Compound.
17 Calls for legal conclusion. Calls for
18 speculation.

19 A. I'm not going to answer what I think a
20 judge -- I'm not sure what the question was, but
21 I'm not going to speculate on a federal judge's
22 decision.

23 Q. All right. We'll talk about that later
24 then.

1 So did Lifestyle -- Lifestyle never
2 asked you for any of the documents that you've
3 talked about here today that would support
4 people -- citizens of Worthington who were in
5 favor of this development?

6 MR. INGRAM: Objection.

7 Q. They never asked you for that
8 documentation.

9 MR. INGRAM: Asked and answered.

10 A. I think that's right.

11 Q. And it exists somewhere?

12 MR. INGRAM: Same objections. It's been
13 asked and answered now three times, Paul.

14 MR. SCHUMACHER: All right. Counsel,
15 please, I'll give you an opportunity to
16 supplement your document -- your responses to
17 our discovery requests because we didn't get any
18 of that information, and we want to --

19 MR. INGRAM: Counsel, if you could
20 submit a subpoena to the wiles -- to the law
21 firm that would have these files.

22 MR. SCHUMACHER: We will. I think we
23 already are.

24 A. Yeah, what exists in terms of that, I

1 don't know. I think, like I said, the main --
2 the main hours of discussion about -- from --
3 was with that business group in terms of their
4 support.

5 Q. You had a couple meetings with Building
6 Worthington's Future, right?

7 A. Couple meetings, a lot of phone calls.

8 Q. And then you had five or six Zoom
9 meetings with about 10 residents each after your
10 application was filed?

11 MR. INGRAM: Objection. Misstates his
12 prior testimony when you asked him earlier --
13 the same question earlier this morning, Paul.

14 MR. SCHUMACHER: I didn't want to get
15 these out, but we'll do it. Why not.

16 A. I can answer one part of that by saying
17 we knew we had a list that topped -- was over a
18 hundred. We invited them all. How many showed
19 up to each meeting, I'm not sure.

20 --0--

21 (Hart Exhibit 10 marked.)

22 --0--

23 BY MR. SCHUMACHER:

24 Q. Have you had a chance to review

1 Exhibit 10?

2 A. Yes, sir.

3 Q. Is this a true and accurate copy of an
4 email exchange between you and Lee Brown and
5 yourself on or about December 31st, 2020?

6 A. Yes.

7 Q. Would you agree with me that he sent you
8 a list of about 90 people?

9 A. Yes. At the time 90, yep.

10 Q. You were scheduling one-hour sessions by
11 Zoom for 10 residents at a time?

12 A. We tried to do that, but I mean,
13 sometimes it was more; sometimes less. We
14 didn't restrict them. If 12 people signed up,
15 we didn't try to control that.

16 Q. But can you tell me how many actually
17 attended any of these sessions?

18 A. I can't today, no.

19 Q. Do you have any notes?

20 A. Not with me, not that I took from that
21 firm because it wasn't -- it was, you know, a
22 client that stayed with the firm, didn't come
23 with me when I left.

24 Q. So you did record some notes about those

1 meetings?

2 A. I'm sure I did.

3 Q. Did you record the Zooms themselves?

4 A. That, I don't know.

5 Q. Did you prepare any summary of the input
6 you received in those five or six meetings that
7 you testified about?

8 A. I don't know. Don't recall.

9 Q. Did Lifestyle Communities or their
10 counsel ask you for that information to respond
11 to discovery in this case?

12 A. No.

13 Q. Would you take the position that those
14 are privileged by attorney-client privilege?

15 A. What I did in the Zoom meetings?

16 Q. Yes.

17 A. No.

18 Q. So if notes or recordings of those
19 meetings described in Exhibit 10 exist, you're
20 not going to take the position that those are
21 somehow protected by attorney-client privilege?

22 MR. INGRAM: Objection. Calls for legal
23 conclusion.

24 MR. SCHUMACHER: I'm asking him, not

1 you.

2 MR. INGRAM: Same objection.

3 A. Well, that's the whole -- the whole
4 deposition is you asking me, but if --

5 Q. Mr. Ingram's not representing you, is
6 he?

7 MR. INGRAM: Objection. He already
8 testified that I am --

9 MR. SCHUMACHER: Oh, okay.

10 MR. INGRAM: -- earlier this morning.

11 A. For the deposition, yeah, he's
12 representing me.

13 Q. Fine.

14 A. My answer would be it could be
15 privileged. Whether I made -- whether I took
16 notes about the meeting, made notes in the
17 margin about, you know, anything that was
18 proprietary to Lifestyle -- I don't know if I
19 sent it to them so I can't say -- I can't answer
20 that question that it would not be privileged.

21 Q. So when I'm in front of a jury in
22 federal court on this case and I'm asking you
23 questions about the public input that you, Tom
24 Hart, received in your outreach to the

1 community, I'm not going to be faced with some
2 objection of your lawyer that says, no, those
3 documents are privileged, am I?

4 A. Well, how could we answer that
5 without --

6 MR. INGRAM: Objection.

7 A. -- without looking at them.

8 Q. That's all I'm asking you.

9 A. They might be.

10 Q. Okay. Good.

11 A. They could be.

12 Q. If that's the objection I'm going to get
13 in court, that's fine with me.

14 MR. INGRAM: Counsel, objection. You're
15 being argumentative.

16 MR. SCHUMACHER: I don't know if I am.

17 MR. INGRAM: You can move on and ask --

18 MR. SCHUMACHER: We're going to subpoena
19 the documents, but if you want to supplement
20 your discovery responses, that would be helpful.

21 BY MR. SCHUMACHER:

22 Q. And the last question: Did you prepare
23 some agenda -- a written agenda for this Zoom
24 meeting with these residents?

1 A. It looks like -- I'm not sure. I don't
2 remember that far back. It looks like what we
3 sent out -- you know, you could interpret this
4 to be an agenda because that's what went to
5 people.

6 Q. Okay. If you could refer to Exhibit 43,
7 please. Have you had a chance to review
8 Exhibit 43?

9 A. I skimmed it, yes.

10 Q. Is that one of the meetings that you
11 attended virtually on December 13th, 2021?

12 A. Yes.

13 Q. Is that one of the videos that you
14 reviewed in preparation for your deposition?

15 A. Yes.

16 Q. If you would flip to page 2 of that
17 document, would you agree with me that this was
18 the public hearing on the ordinance number
19 58-2021 that you applied for to rezone this
20 property?

21 A. Well, it's the ordinance -- referring to
22 the application. It's the hearing on the
23 application.

24 Q. And if you'll skim down, it says, about

1 10 lines down, this request is to rezone and
2 allow up to 600 residential units consisting of
3 22 single-family homes, 86 townhomes, 72
4 townhomes/flats, and 420 apartments along High
5 Street frontage. Do you see that?

6 A. Yes.

7 Q. Would you agree with me, then, that on
8 December 13th of 2021 the city of Worthington
9 city council had a public hearing on your
10 revised concept plan that you submitted in
11 September of '21?

12 A. No. That must be a mistake. That's not
13 what they -- that's not what they heard and
14 voted on.

15 Q. I was going to ask you if this is a true
16 and correct --

17 A. It's a mistake.

18 Q. Is this a true and correct copy as far
19 as you know of the city council agenda?

20 A. People make mistakes in the minutes.

21 Q. Okay. So you would refer to the actual
22 video of the hearing?

23 A. I don't know, but I mean, what they
24 heard was our original app, not the amended one.

1 That's my -- that's what I think happened.

2 Q. So if the actual ordinance that was
3 brought up for vote said, and I quote, "The
4 request before you is the 37.8 acres along High
5 Street to rezone to allow up to 600 residential
6 units," you disagree with the fact -- are you
7 disagreeing with that statement?

8 MR. INGRAM: Objection. Counsel, you're
9 just quoting from something in your hand that
10 you're not showing the witness. He has no way
11 to verify.

12 Q. I prepared a transcript of the hearing.
13 All I'm asking you, Tom, is do you recall that
14 Mr. Lee Brown said at the hearing that they were
15 considering your application to rezone to allow
16 up to 600 residential units?

17 A. I don't remember that, but I know that
18 they rejected our amendment at planning
19 commission. So then what they voted on at
20 planning commission was the original app with
21 the greater number of units and that's what
22 council heard. You know, municipal clerks make
23 mistakes in minutes.

24 Q. Fine. You would defer to the actual

1 recording of the October 14th, '21 MPC hearing,
2 wouldn't you?

3 A. I mean, I guess. He may have misspoke
4 himself on that. I don't know.

5 Q. Okay. Fine.

6 A. But I know they did not amend -- they
7 would not amend our initial application. So
8 what council -- what the council heard and
9 rejected had to be the original application.

10 Q. Dispute the fact that the agenda, the
11 minutes, and the actual audio recording and
12 video recording of that December 13th, '21
13 meeting suggests otherwise?

14 MR. INGRAM: Objection. Argumentative.

15 A. Yeah, I mean, I think -- I'm not sure
16 how to explain it, but I --

17 Q. Fine. All right. That's good.

18 And the application that was rejected,
19 whichever one was rejected, by city council
20 after a public hearing on December 13th, 2021
21 could have been refiled in a different or more
22 conforming manner within six months. We've
23 established that, right?

24 MR. INGRAM: Objection. Misstates this

1 witness's prior testimony. This has been asked
2 and answered numerous times.

3 A. I'm not sure what they would have
4 accepted.

5 Q. In fact, you could still file another
6 application with the city of Worthington to
7 rezone this property even today, couldn't you?

8 A. Not under the same circumstances. I
9 mean, my understanding is they amended their
10 comp plan since that period. So, you know, I
11 think they tried to -- not sure of the effect of
12 that amendment, but I don't think you could --
13 the comp plan I think has been -- has been
14 amended.

15 Q. Nonetheless --

16 A. You could file an application.

17 Q. Nonetheless, you or any applicant could
18 file -- well, the property owner could file an
19 application to rezone the property under the
20 current comprehensive plan?

21 A. Yeah. I think it has a very small
22 commercial section up front. The rest of it's
23 like open space from memory.

24 Q. Have you been asked to make any such

1 application?

2 A. No.

3 Q. Are you still under retainer with
4 Lifestyle Communities in this case?

5 A. No.

6 Q. Did your work end once the application
7 was denied by city council in December of '21?

8 A. Again, I don't remember. There could
9 have been other stuff I worked for them on
10 besides this, minor -- minor issues, but I'm not
11 sure when that was. In terms of work on this,
12 yeah, around that time my work concluded.

13 Q. Could you refer to Exhibit 35, please.
14 Have you had a chance to review
15 Exhibit 35?

16 A. Yes.

17 Q. Would you agree with me that this is an
18 email exchange -- at least a portion of it is an
19 email exchange that you had with Lee Brown on
20 September 24th, 2020?

21 MR. INGRAM: Objection. Misstates the
22 document.

23 A. It's not --

24 Q. I'm sorry, with Mr. Greeson. Excuse me.

1 MR. INGRAM: Same objection.

2 A. Yeah, it's not -- no, I don't agree with
3 that. It's internal to them.

4 Q. Oh, I'm sorry. I'm sorry. I was
5 looking at something else. Let me start again.

6 Do you recall having a conversation with
7 Lee Brown where you told him that you did not
8 have a detailed site plan at this time, and that
9 time being September 24th of 2020?

10 A. I don't recall that, but that's what
11 the -- his memo internally to Worthington says.

12 Q. Do you recall telling Lee Brown that you
13 did not have an anticipated date to file, but
14 possibly November or December?

15 A. I don't recall that.

16 Q. All right. So if Lee Brown testifies
17 that you told him that you were anticipating a
18 file date -- you didn't have a file date, but
19 possibly November or December, you just don't
20 recall one way or the other whether you said
21 that?

22 MR. INGRAM: Objection. Asked and
23 answered.

24 A. Correct.

1 Q. Did you tell Lee Brown on or about
2 September 24th, 2020 that you were -- any
3 particular number of apartments that you were
4 anticipating proposing for this site?

5 MR. INGRAM: Objection to form.

6 A. I don't recall that.

7 Q. You just don't know?

8 A. No, I don't remember telling him that is
9 what I'm saying.

10 Q. All right. But you do agree that within
11 two weeks of this you indeed filed an
12 application proposing 730 residential units on
13 this site?

14 A. I think what I said before is I
15 acknowledge the date that I signed it. When I
16 filed it could be a different date, but it was
17 somewhere around that time.

18 Q. Okay. We can agree that October 2nd is
19 in advance of November or December of 2020.

20 A. Yes.

21 Q. Right?

22 A. Certainly. Yes.

23 Q. Something we agree on.

24 Do you recall reading Lee Brown's staff

1 report in this case?

2 A. Which staff report?

3 Q. The staff report that he prepared for
4 either the January '21 MPC meeting or the
5 October 14th, '21 MPC meeting.

6 A. I'm sure I read them both.

7 Q. Okay. And you would agree with me that
8 he compared your application in both cases to
9 the comprehensive plan, didn't he?

10 A. He did his analysis of that, correct.

11 Q. And you respect him as a professional
12 land planner, don't you?

13 A. Certainly do.

14 Q. All right. And in his second staff
15 report in October of 2021 he made reference to
16 the 2014 comp plan when he did his analysis of
17 your application. Do you recall that?

18 A. No, not without reading that, but I
19 don't doubt it, but I don't remember that.

20 Q. Fair enough. And I think we talked
21 about this already. He had certain deficiencies
22 that he noted in his professional opinion with
23 reference to the comp plan and your application,
24 right?

1 A. I don't know. I don't remember.

2 Q. Okay. And he also pointed out some
3 changes you'd made between January of '21 and
4 October of '21 when you presented the revised
5 concept plan?

6 A. I remember him saying we made
7 improvements, yeah.

8 Q. Right. Again, he was fair, he noted
9 where you improved, but he also pointed out
10 deficiencies?

11 MR. INGRAM: Objection. Misstates this
12 witness's prior testimony. It's the same
13 question.

14 Q. I'm just asking do you agree or
15 disagree? That's all I'm asking. If you think
16 he was completely unfair, tell me.

17 A. Well, it's not --

18 MR. INGRAM: Same objections.

19 A. It's not black or white. I don't agree
20 with his analysis. So whether it's fair -- I
21 would say it's not fair --

22 Q. Okay.

23 A. -- what his analysis was.

24 Q. But he did the analysis?

1 A. He -- that's his job, yes.

2 Q. So when he says in his October staff
3 report the overall density should be
4 dramatically reduced to better reflect what is
5 recommended in the plan by the community, you
6 disagree with that statement?

7 MR. INGRAM: Objection. Counsel, you're
8 reading from a document. Why don't you show the
9 witness a copy of the document.

10 A. It would be fair for me to read it.

11 Q. Where's the staff report? I don't want
12 to remark the exhibit.

13 A. A lot of times they put their staff
14 report in the actual council minutes so it might
15 be in there.

16 Q. It is. I thought Mr. Ingram marked it.
17 I don't want to waste paper. If you could refer
18 to Exhibit 83, page 28.

19 A. 28 of 57?

20 Q. Yep. There's a section on residential
21 density, height and housing types.

22 A. Yes, sir.

23 Q. Do you recall reading this section?

24 A. I don't recall reading it, but I'm sure

1 I did. I read staff reports.

2 Q. Would you agree with me that your
3 revised site plan submitted in September of '21
4 reduced the overall density on the site by
5 approximately 19 percent from 730 units to 600
6 units?

7 MR. INGRAM: Objection. Asked and
8 answered.

9 A. Just to be clear, residential density,
10 yes.

11 Q. Okay.

12 A. Commercial office went up.

13 Q. Right. But he noted that in the report?

14 A. Yes.

15 Q. That's a positive thing, isn't it, in
16 your view?

17 A. Yeah. One of the problems here is
18 he's -- he's referring and making analysis to
19 the 2015 version that was never filed, never a
20 formal application, didn't go anywhere. That
21 was maddening. That site included more acreage.

22 Q. I'm glad you brought that up.

23 A. It was a totally different --

24 Q. I'm glad you brought that up.

1 A. well, let me finish. It was a different
2 context, different time, before office-mageddon,
3 and you know, that was one of the battles I had
4 with Lee, Scott. You know, we'll call them
5 the -- some of the folks that tried to work with
6 us at some points. They kept going back to '15
7 and it was just completely irrelevant. I
8 remember telling Scott -- it might have been in
9 public hearings -- I mean, that was like three
10 presidents ago, you know.

11 Q. You did say that, yes.

12 A. I did. Or four maybe. Three or four.

13 Q. He disagreed with you, though, didn't
14 he?

15 A. well, let me finish. I mean, the
16 problem with Lee's analysis starts with the
17 2015, you know. Then it ends with this, you
18 know, admission to reduce density, but they
19 would never tell us what the right density was.
20 They would never try to work with us. Lee is
21 truly a professional, good guy, but he was -- he
22 was told not to work with us. That was clear.

23 Q. You don't know that as a fact, do you?

24 A. He told me that.

1 Q. who?

2 A. Lee.

3 Q. who told you that?

4 A. Lee told me that he would just handle
5 housekeeping administrative matters, that he
6 wasn't empowered, and then later on Scott said
7 we're not -- we're not empowering staff. We're
8 not going to allow you to negotiate with staff
9 or work with staff. You're going to have to do
10 everything at the planning commission. So that
11 was clear for months that, you know, we were
12 only -- we were never allowed to work with Lee
13 Brown in Lee's full capacity as a master planner
14 and a significant professional.

15 Lee and I handled administrative
16 housekeeping functions, and then he wrote a
17 report that was disappointing because it didn't
18 reflect what we know to be his skill level and
19 his ability to -- again, a PUD application in
20 Ohio under Ohio law, planned district law, is
21 you have an expectation that you're negotiating,
22 you're -- that there's going to be
23 collaboration, there's going to be -- you can't
24 negotiate a TIF, and how to handle the economics

1 of a parking deck, and how to pay for that or
2 community authority or what other things need to
3 be funded in terms of traffic improvements in a
4 planning commission meeting. You have to have
5 access to professional staff and their skill
6 level.

7 That -- that's the problem with Lee's --
8 that's what's missing from his report, that
9 whole process that we were denied. I'm someone
10 who actually wants to get something done. I
11 didn't take this on to set up a lawsuit. Okay.
12 I took this on to get -- to be proud of
13 something that could get built in the real
14 world, and you know, I'm expressing frustration
15 which you probably don't want to hear.

16 Q. Keep -- just let me know when you're
17 done.

18 A. It's frustrating to go back and read his
19 staff report, because what's missing is but
20 Mr. Hart asked me 50 times, and others, what is
21 the right density, how do we get to that, how do
22 we support office and economic uses that are
23 going to help the city in this environment, you
24 know, post-COVID office environment.

1 Q. Are you done?

2 A. Yes, sir.

3 Q. I hate to do this. Move to strike your
4 answer as nonresponsive and thank you for your
5 opinion.

6 A. Well, what was your question? You asked
7 me about --

8 Q. I'm going to ask a new question.

9 A. Go ahead.

10 Q. You don't expect a city planner to
11 ignore a public meeting that occurred in 2015
12 where 350 people attended, do you?

13 MR. INGRAM: Objection. Asked and
14 answered multiple times.

15 Q. As a zoning lawyer, you don't expect
16 them to ignore that, do you?

17 MR. INGRAM: Same objection.

18 Q. I know you don't think it's relevant,
19 but you don't expect a city planner to ignore
20 that fact?

21 MR. INGRAM: Same objections. Calls for
22 speculation.

23 A. I do.

24 Q. You expect him to ignore that?

1 A. Yeah.

2 Q. Okay. That's all I need to know.

3 And in 2015 when that proposal was made
4 of 530 units, we were talking about more acreage
5 at the time, weren't we?

6 MR. INGRAM: Objection.

7 Q. There were 40 acres at that point.

8 MR. INGRAM: Objection.

9 Mischaracterizes the evidence.

10 A. It's more than 40.

11 Q. Right. It was more than you were
12 working with in 2020 and '21, right?

13 MR. INGRAM: Objection.

14 Mischaracterizes the evidence.

15 Q. So when you made your application shown
16 in Exhibit 1 and 2 for 730 residential units,
17 you were making that on a piece of property that
18 had less acreage than the previous informal
19 proposal in 2015. Can we agree on that?

20 A. We can agree on that with the fact that
21 the market had changed dramatically,
22 dramatically in the history of this country.

23 Q. Right. And things change all the time,
24 don't they?

1 A. Of course.

2 MR. INGRAM: Objection.

3 Q. In fact, the comp plan could be enacted
4 in 2015 and needed to be changed a year later
5 when something like that happens, right?

6 MR. INGRAM: Objection. Calls for
7 speculation.

8 MR. SCHUMACHER: No, that's
9 argumentative.

10 MR. INGRAM: And it's argumentative.

11 Q. Right?

12 A. It had not --

13 MR. INGRAM: Same objections.

14 A. It had not been changed by the time we
15 filed.

16 Q. But if public opinion were so opposed to
17 this particular proposal, you're not -- it's not
18 your opinion as a zoning lawyer that the city
19 representatives should ignore that citizen
20 opposition, is it?

21 MR. INGRAM: Objection. Ambiguous and
22 objection to form.

23 You may answer to the extent you can.

24 A. Any public official that wants -- who's

1 elected and wants to be reelected has to do a
2 good job listening to public opinion. That
3 doesn't mean they throw out their comp plan and
4 their code and how -- in their normal processes
5 with dealing with development. That is the
6 essence of my life, my job --

7 Q. I understand your opinion.

8 A. -- to -- no, I'm just --

9 MR. INGRAM: Let him finish, Counsel.

10 A. I've seen better examples of dealing
11 with the public and what the public says and
12 what -- you know, what neighbors say and dealing
13 with what the rest of the community has said and
14 spoken though their comp plan and how to balance
15 the two. If there's a failure on the leadership
16 of the city of Worthington, it's in that, in
17 balancing that appropriately.

18 Q. But, Tom, you're aware of the fact that
19 councilmembers in the city of Worthington have
20 run for council based upon this issue alone,
21 whether they're for it or against it. You're
22 aware of that, aren't you?

23 A. I'm not. I don't -- I didn't follow
24 their election campaigns, no.

1 Q. Did Lifestyle Communities ever provided
2 you with their internal documents assessing
3 pro-development and anti-development candidates?

4 MR. INGRAM: Objection to form.

5 You can answer to the extent you know.

6 A. Yeah, I don't recall.

7 Q. Would it surprise you that they have
8 such documentation?

9 MR. INGRAM: Same objection.

10 A. I don't really have a -- I don't know.
11 I don't have an opinion on that.

12 Q. So as their zoning lawyer and as the
13 applicant in this case -- I want to be clear --
14 Lifestyle Communities and their affiliates did
15 not provide you with any of their data on pro-
16 and anti-development councilmembers in the city
17 of Worthington?

18 MR. INGRAM: Objection to form.

19 Ambiguous.

20 You may answer to the extent you can.

21 A. I think I did already answer. I don't
22 remember that.

23 Q. Well, you don't remember that they gave
24 it to you or you don't remember at all?

1 MR. INGRAM: Same objections.

2 A. Either. Both.

3 Q. Okay. But you would agree with me with
4 regard to Exhibit 83 the city of Worthington's
5 professional planner provided a report comparing
6 your application to the language of the 2014
7 comprehensive update. That's what he did? I
8 understand you disagree with it, but he did
9 that.

10 A. Well, you answered my question. I
11 disagree with his analysis of the comp plan.

12 Q. And that's fine. But he did an analysis
13 based on the comp plan with reference to it.
14 You agree with me, don't you?

15 A. Yes.

16 Q. Okay.

17 --0--

18 (Hart Exhibit 11 marked.)

19 --0--

20 BY MR. SCHUMACHER:

21 Q. Have you had a chance to review
22 Exhibit 11?

23 A. Yes, sir.

24 Q. Does this appear to be a true and

1 accurate copy of, at least a portion of it,
2 email exchange between you and Scott Green on
3 and about January 25th of 2021?

4 A. Yes.

5 Q. In that general time frame?

6 A. Yep.

7 Q. And this would be after your
8 presentation at the January 21st, 2021 municipal
9 planning commission meeting?

10 A. Yes.

11 Q. Did you attend this meeting with
12 Building Worthington's Future or BWF?

13 A. I attended at least two meetings with
14 them so this -- I believe so. I'm not exactly
15 sure when the date was. Looks like this says it
16 was the 15th.

17 Q. Is it Mr. Hermann -- I'm sorry, it must
18 be Mr. Scott who is, in the second page of this
19 exhibit, is suggesting that you not use
20 Kingsdale shopping center redevelopment as an
21 example of a similar redevelopment. You see
22 that? Paragraph E.

23 A. Yeah. I'm confused because there's
24 no -- I don't think there's a Mr. Scott. You

1 might be referring to Scott Green.

2 Q. Some of this is redacted, but who's
3 Scott Green?

4 A. He's a member of that organization.
5 He's a guy that works at Park -- Park National.

6 Q. And Jon Melchi, do you know him?

7 A. Yes.

8 Q. He's also a member of this Building
9 Worthington's Future organization?

10 A. I don't know about that. He's a
11 resident.

12 Q. Former coworker with you at BIA?

13 A. No, I never worked with him. He's a
14 predecessor in the job I was in.

15 Q. Is it fair to say he's pro development?

16 A. Yes.

17 Q. Is it fair to say that Scott Green is
18 pro development?

19 A. Yes, generally.

20 Q. It is hard to understand, but it seems
21 to me that Scott's writing to you on
22 January 25th, 2021 confirming this meeting that
23 was to occur on January 24th at the Park bank's
24 community room, right?

1 A. I think that's right.

2 Q. Then he said he wanted to share with you
3 his email to this, apparently, BWF group which
4 he then copies. Is that fair? Is that your
5 understanding?

6 A. Prior to the meeting I wanted to share
7 with you my email to the group following your
8 presentation; so yes.

9 Q. And it looks like he then lists a number
10 of items, and under one on the second page it
11 says, things Lifestyle needs to work on in their
12 future presentations and items we should address
13 when we meet with them in the next few weeks.
14 Do you see that?

15 A. Yes.

16 Q. Do you know what he meant by that?

17 MR. INGRAM: Objection. Calls for
18 speculation.

19 Q. I'm not asking you to speculate. I'm
20 asking you what your interpretation of that
21 statement is, sir?

22 A. They were supportive of the application,
23 what we're trying to do, and they were
24 expressing their opinions on, you know,

1 different things we should emphasize or not
2 emphasize.

3 Q. To try to gain approval of the municipal
4 planning commission?

5 A. Make progress.

6 Q. And one of those was, I think, telling
7 you or recommending to you not to use Kingsdale
8 shopping center redevelopment as an example. Am
9 I reading that correctly?

10 A. Yes.

11 Q. What did that mean to you or why did
12 he --

13 A. I don't know.

14 Q. Did you continue to use Kingsdale as an
15 example, then?

16 A. I did.

17 Q. Okay.

18 A. I believe I did.

19 Q. Because you still felt it was a relevant
20 example?

21 A. In-fill redevelopment of an older site
22 led by residential, supporting commercial, I
23 mean, I see these in-fill sites as pretty
24 similar with -- some are different scale,

1 different scope, but...

2 Q. If you flip to the third page, I think,
3 there's a number three, Chris Hermann's second
4 email. You see that?

5 A. Yes.

6 Q. Who wrote this? Do you think this is
7 still this Scott Green?

8 MR. INGRAM: Objection. Calls for
9 speculation.

10 A. It's hard to tell really.

11 Q. I'm not asking you to speculate.

12 A. I don't know who wrote it.

13 Q. I'm asking if you know. I thought that
14 was pretty clear.

15 A. I don't know.

16 Q. Well, with regard to that subparagraph
17 three that starts with reminding residents that
18 the choice facing our community is not -- how do
19 you say that word?

20 A. Dichotomous.

21 Q. Dichotomous. That's a big word. Do you
22 agree with that paragraph in general?

23 A. I'll read it first.

24 MR. INGRAM: Objection to form.

1 Compound.

2 A. Okay. I'm sorry, what was the question?

3 Q. Well, do you agree in general with that
4 subparagraph three starting with reminding
5 residents?

6 A. I really can't answer that. I mean, I
7 don't know who wrote it. I'm not -- I mean,
8 generally speaking, those folks were trying to
9 work with us. They wanted this application to
10 be -- to have give and take. They're leaders in
11 the community as well. I think Chris Hermann
12 wrote -- I think he was the principal, not MKSK
13 that wrote the comp plan, at least the amendment
14 in '14. So you know, that guy's a significant
15 land planner, but you know, what a business
16 group tells somebody like me that's trying to
17 work on a zoning application and what action I
18 take and, you know, what I filter -- one of your
19 favorite words.

20 Q. No, that's your word.

21 A. -- you know are -- I mean, I had a job
22 to do, and so they were helpful comments, you
23 know, they were supportive. They continue to be
24 supportive. One of the folks from this group

1 did testify at the second planning commission
2 meeting in support, but yeah, I don't agree with
3 everything they were saying.

4 Q. I'm curious about a couple things, Tom.
5 This site, UMCH site, it says here does not
6 require rezoning. Is that your understanding?

7 A. Well, that's the guy's wife's opinion so
8 I don't know what that means.

9 Q. Well, as I review Exhibit 1, you listed
10 the current zoning for the property, didn't you,
11 this Exhibit 1 over here?

12 A. Yes.

13 Q. And so it is true, isn't it, that
14 Lifestyle could build on the property, their own
15 property, within those zoning classifications,
16 couldn't they?

17 MR. INGRAM: Objection. Calls for
18 speculation. Incomplete hypothetical. Calls
19 for legal conclusion.

20 Q. You're a zoning lawyer, right?

21 MR. INGRAM: Same objections.

22 A. You know, as an example, they're not in
23 the mega church business, or the private school
24 business, or mental health/drug/clinic/rehab

1 facility. They're not in the business that the
2 super limited zoning that exists there today
3 would allow. There'd be really no private
4 sector economic project of a mixed use variety
5 that would meet the comp plan that you could
6 file under that current zoning or that existing
7 zoning.

8 The existing zoning -- put another way,
9 the existing zoning, that S1 with the small
10 commercial, doesn't fit their comp plan. So it
11 would be required to rezone the site to fit the
12 comp plan. So, you know, it's easy for somebody
13 to say that it could be a mental health drug
14 clinic, but that wasn't what Lifestyle was ever
15 going to do, ever going to try.

16 Q. But Lifestyle knew that when they
17 purchased the property, they knew what the
18 zoning was.

19 MR. INGRAM: Objection. Calls for
20 speculation.

21 MR. SCHUMACHER: Really? Calls for
22 speculation?

23 MR. INGRAM: You're asking this witness
24 to put -- to understand the mind of a company.

1 This is not a 30(b)(6) witness.

2 MR. SCHUMACHER: Let me withdraw the
3 question.

4 A. Let me --

5 Q. No, I'm withdrawing the question.

6 A. I'll answer with your next one because
7 it's the comp plan that they filed for, not the
8 current zoning.

9 Q. What do you know about Lifestyle
10 Communities' intent for purchasing the property,
11 anything?

12 A. They knew that -- they came and told me
13 here's a comp plan, here's what it says. We're
14 going to file to try to accomplish what's in
15 this plan.

16 Q. What did they tell you they wanted to
17 accomplish?

18 MR. INGRAM: Objection. Asked and
19 answered.

20 A. Yeah. The initial plan I worked on.
21 Then as it evolved, the resubmittal.

22 Q. All right. So they told you they wanted
23 to build 730 residential units on this property?

24 MR. INGRAM: Objection. Asked and

1 answered.

2 A. That's what they asked me to file and
3 pursue.

4 Q. Okay. Did they tell you how much they
5 could expect to profit from such a development?
6 Did they share that with you?

7 A. No.

8 Q. Did they tell you at any time given the
9 opposition to the density that you were
10 proposing that they could get away with less
11 than 600 residential units?

12 MR. INGRAM: Objection to form. Assumes
13 facts not in evidence.

14 A. No. They never said, you know, here's a
15 number. They said let's resubmit and let's go
16 into the process and negotiate and see what we
17 can get.

18 Q. As you're a lawyer, did you ever tell
19 them based on the public comments I've heard at
20 all of these meetings, based on the comments
21 I've heard on my Zoom calls, that a lower
22 residential density might be appropriate, lower
23 than what you proposed?

24 MR. INGRAM: Objection.

1 Q. Did that ever come up?

2 MR. INGRAM: Objection to the extent
3 you're seeking this witness's legal advice to
4 Lifestyle with respect to their application.

5 You're instructed not to the divulge any
6 legal opinions you provided to Lifestyle. To
7 the extent you can answer this question without
8 doing so, you may.

9 A. What became clear to me personally is we
10 had to get -- we had to have that give and take
11 with Worthington, with their staff, with their
12 leadership. That's what we had -- that's the
13 only way we were going to find out what could
14 work there, both economically, politically.
15 That's my -- the essence of my whole job is to
16 find where the politics and the economics of a
17 site are going to meet and are going to work so
18 that was --

19 MR. INGRAM: Let him answer.

20 A. -- that was not something I told them.
21 It's something I just knew from, you know, my
22 whole career.

23 Q. Yeah. I understand your answer and I
24 appreciate it. My question is a little

1 different, to steal a line from one of my
2 colleagues. Did you ever tell Lifestyle that
3 you felt based upon what you've been hearing
4 that the residential density was too high?
5 Simple question. Guys, it's too high. Did you
6 ever say that to them --

7 MR. INGRAM: Same --

8 Q. -- in any way?

9 MR. INGRAM: Same objection and
10 instruction as the prior question.

11 A. I don't believe I did.

12 Q. And the other side of that is did they
13 ever tell you -- I think we talked about this,
14 but I want to be sure. Did they ever tell you
15 we can't do this project unless we get X number
16 of residential units?

17 A. No.

18 Q. They never told you that?

19 A. No.

20 Q. So as the zoning lawyer attorney and
21 applicant for Lifestyle Communities you weren't
22 armed with those facts?

23 A. Correct.

24 Q. Fine. I just have two more exhibits and

1 we're done.

2 --0--

3 (Hart Exhibit 12 marked.)

4 --0--

5 BY MR. SCHUMACHER:

6 Q. Have you had a chance to review
7 Exhibit 12?

8 A. Yes.

9 Q. Have you ever seen this document before?

10 A. I do not believe so. I don't remember
11 seeing it.

12 Q. Was any of that information ever shared
13 with you from Lifestyle Communities or any of
14 their representatives?

15 A. Well, it -- I don't know. It's possible
16 that I'm the one that was like trying to figure
17 out dates for them, but I don't know if I did
18 for this or not.

19 Q. Do you think you were involved at this
20 point? And just to be clear the date of the
21 email is November 5th, 2019.

22 MR. INGRAM: Objection. Asked and
23 answered repeatedly this morning.

24 A. I don't recall.

1 MR. SCHUMACHER: This document? We just
2 introduced it.

3 MR. INGRAM: No. You've asked him
4 numerous times, Counsel, when he was first
5 involved.

6 MR. SCHUMACHER: And he couldn't tell me
7 the exact date.

8 Q. I'm asking him was this a date when you
9 were involved or not?

10 A. I don't know. What I can tell you is
11 what I said before, that it was 2020 that I
12 really started working with them, working on
13 this. They may have contacted me in fits and
14 starts before that, but the date at which I
15 really started working and billing was 2020.

16 Q. And my question for you is do you
17 believe you had any input or were involved in
18 the creation of these timelines shown in
19 Exhibit 12?

20 MR. INGRAM: Objection. Asked and
21 answered.

22 A. Yeah, I don't know.

23 Q. Okay. The -- at the very bottom the
24 last paragraph, I want to direct your attention.

1 You see that?

2 A. The potential timelines -- these
3 potential timelines?

4 Q. Uh-huh.

5 A. Yes.

6 Q. Did you know about OhioHealth -- or what
7 did you know about OhioHealth?

8 A. Very little. I knew at different times
9 they were a possible co-applicant or they had I
10 think actually maybe negotiated to buy part of
11 the property or be part of an application at
12 some point, but it's -- I wasn't involved in any
13 dealings with them or working on that with
14 Lifestyle. But I do remember when, you know,
15 after -- when COVID really hit, they were gone.
16 They were not going to be involved anymore
17 because of what happened economically to their
18 business. So there was a time when they may or
19 may not have been involved. It had nothing to
20 do with me. I wasn't working on that, but then
21 there was a certain time when they were gone.

22 Q. Do you know who Eric Buchanan is at
23 Lifestyle Communities?

24 A. I don't remember the person's name.

1 Q. You do now Jode Ballard, though.

2 A. Jode Ballard, yes.

3 Q. Jode. Excuse me. I bet everyone calls
4 him Jode.

5 It doesn't surprise you, though, that
6 Mr. Ballard had two different timelines
7 depending upon who was elected council for the
8 city of Worthington, does it?

9 A. I don't -- I can't really answer
10 questions about what he -- I don't know where
11 this --

12 Q. No. My question is more general. In
13 your experience doing these zoning cases for
14 developers does it surprise you that they would
15 have a different plan depending upon who got
16 elected in a community?

17 MR. INGRAM: Objection. Calls for an
18 incomplete hypothetical.

19 A. I'm not sure if that -- I get hired to
20 zone no matter who's in office.

21 Q. You told me several times about your
22 experience in zoning with other communities.
23 All I'm asking you is do you find this email
24 unusual or not? Do you find it unusual that

1 they were going to have a different timeline for
2 rezoning submittals depending upon who got
3 elected?

4 MR. INGRAM: Objection. Ambiguous.
5 Calls for speculation. You may answer to the
6 extent you can.

7 A. I don't know. It doesn't appear to be
8 something I was involved in.

9 Q. And this OhioHealth, you knew that they
10 were considering building some kind of medical
11 office on the site -- on a portion of the site?

12 MR. INGRAM: Objection. He just
13 answered the questions about this.

14 A. That was -- I do think I answered but
15 that was in the papers. It was --

16 Q. Yeah. So it was something you knew
17 about?

18 MR. INGRAM: Objection. Asked and
19 answered.

20 Q. It's not an incomplete hypothetical,
21 Tom, is it? You knew that OhioHealth was
22 considering building a medical facility on this
23 site, didn't you? Simple question.

24 MR. INGRAM: Objection. You're getting

1 argumentative.

2 A. I'm just saying I answered that.

3 Q. What was your answer? I forgot.

4 A. Okay. It was -- there was a time in
5 which I was aware that that was a possibility,
6 but then there was a time it went away based on
7 the COVID economy.

8 Q. Okay. And in your opinion as a zoning
9 lawyer would OhioHealth be permitted under
10 current zoning to build a medical office
11 facility there?

12 MR. INGRAM: Objection. Calls for a
13 legal conclusion. Incomplete hypothetical.

14 MR. SCHUMACHER: It certainly does call
15 for a legal conclusion.

16 MR. INGRAM: And speculation.

17 Q. I'm asking you for your legal conclusion
18 as a zoning lawyer could OhioHealth build a
19 medical office facility on the site today given
20 the current zoning?

21 MR. INGRAM: Same objections and
22 compound as well.

23 You may answer to the extent you can.

24 A. I don't know.

1 Q. You don't know?

2 A. I don't know. I never analyzed that.
3 It would take analysis.

4 Q. Does the S1 zoning code permit medical
5 office facilities on that site?

6 MR. INGRAM: Objection.

7 Q. You don't know?

8 A. I don't know.

9 MR. INGRAM: Objection. Calls for legal
10 conclusion. Calls for speculation. It's an
11 incomplete hypothetical.

12 ==0==

13 (Hart Exhibit 13 marked.)

14 ==0==

15 MR. INGRAM: Counsel, I note it's
16 quarter after 2. We've been going since a
17 little after 9. Are we about done here? Should
18 we break for lunch?

19 MR. SCHUMACHER: I'll let you know when
20 it's time to break.

21 BY MR. SCHUMACHER:

22 Q. Have you had a chance to review
23 Exhibit 13?

24 A. Yes.

1 Q. Do you recall -- well, just for the
2 record, Exhibit 13 is a copy of an article that
3 was published in The Columbus Dispatch on
4 January 26, 2022. Do you see that?

5 A. Yes.

6 Q. Did you see this article when it was
7 published?

8 A. I don't remember.

9 Q. Do you recall providing information to
10 reporter Stephen Borgna, B-O-R-G-N-A, for this
11 article?

12 A. I don't recall it, but it looks like I
13 did.

14 Q. I'm going to ask you questions then
15 about it. Well, you would agree with me that
16 you were the zoning attorney Tom Hart of Isaac
17 Wiles law firm in Columbus who was retained by
18 Lifestyle Communities, weren't you?

19 A. Yeah.

20 Q. Did you tell them that the company,
21 referring to Lifestyle, could choose to refile
22 another application to redevelop the site after
23 the failure of its latest proposal in December?

24 A. Did I tell the paper that?

1 Q. Yes.

2 A. It looks like it, yes.

3 Q. And you were aware that the client, your
4 client, Lifestyle, could do that, right? We
5 talked about that.

6 A. Well, what you tell a reporter to
7 message what you think should happen and what
8 Worthington may have let happen is complete
9 speculation. I mean, who knows what they would
10 have done.

11 Q. I just want to know if you told the
12 reporter that. Is that accurate?

13 A. It looks like I did.

14 Q. Do you see the fourth paragraph on the
15 first page?

16 A. Since 2015?

17 Q. Yes. The reporter wrote since 2015 the
18 company has submitted three proposals to rezone
19 and then redevelop the UMCH property into a
20 mixed use residential and commercial project.
21 Do you see that?

22 A. Yes.

23 Q. You don't agree with that, though. We
24 talked about that.

1 A. Correct. There was not a -- there was
2 no third submittal.

3 Q. There were two proposals, not three.

4 A. Yeah.

5 Q. But do you see where it says to date
6 each proposal has been scrapped because of poor
7 feedback from city officials and residents, or
8 did not receive authorization from city
9 officials who have cited several concerns with
10 the proposals, including density, greenspace and
11 the height of several buildings? You see that
12 line?

13 A. Yes.

14 Q. Did you give that information to the
15 reporter?

16 A. Don't think I would have, but I don't
17 know.

18 Q. Do you agree that each proposal was
19 scrapped because of poor feedback from city
20 officials and residents?

21 A. No, that's his -- what the reporter
22 thinks.

23 Q. But did the city cite several concerns
24 with the proposals including density, greenspace

1 and the height of several buildings?

2 MR. INGRAM: Objection to form.

3 A. Yeah. We talked about density. The
4 greenspace part was really, really hard because
5 this is an in-fill site at 25 percent
6 greenspace. So to the extent they did, if they
7 did, it was off.

8 Q. But it was discussed?

9 A. I'm just saying that our proposal had
10 25 percent greenspace in an in-fill site and
11 that's very unusual. I mean, that's a lot of
12 greenspace on a 37-acre site, 25 percent of it.

13 Q. But all I'm asking you --

14 MR. INGRAM: Counsel, let him finish his
15 answer.

16 A. On the height part --

17 Q. Yeah.

18 A. The height part was kind of the ultimate
19 because the planning commission chair, you know,
20 known and respected, he said he wouldn't agree
21 with five stories even though that's exactly
22 what the comp plan said. And I pointed it out
23 to him, you know, that the comp plan says five
24 stories. He said I know. I don't agree with

1 that. So they're not following their own comp
2 plan, and so, you know, yeah, they're citing
3 these things to the reporter, but I think
4 unfairly.

5 Q. Okay. When the commissioner mentioned
6 the five stories in that hearing, what he
7 actually told you was, Tom, I'd like to know
8 what the density would be if you reduced this to
9 three or four stories. That's what he told you,
10 isn't it?

11 MR. INGRAM: Objection.
12 Mischaracterizes --

13 MR. SCHUMACHER: Well, let him answer
14 first before --

15 MR. INGRAM: -- the evidence.

16 A. I agree with my objecting lawyer. He
17 said -- I believe he said he's never going to
18 agree with five stories even though the comp
19 plan says five stories. I think he said that.

20 Q. And didn't he invite you to tell him
21 what effect the density would have if you
22 reduced the height to three or four stories?

23 A. I don't remember that. I remember
24 asking him what the number was. What's our

1 residential number. what's our density.

2 Q. Right. And if the record shows that he
3 asked you how the density would be affected if
4 the residential height of those buildings were
5 reduced, would you agree that it's on the record
6 if it's in the record? You want me to -- come
7 on, I'll read it.

8 MR. INGRAM: Objection to form. It's
9 compound.

10 A. Yeah, if something is in the record, I
11 agree it's in the record, yes.

12 Q. Okay. So -- all right. We're not going
13 to -- we'll talk about that at trial. I'll have
14 it on the screen for you so you can actually see
15 what was said, and we'll play it so you can
16 actually see what was said.

17 MR. INGRAM: Objection. Counsel, now
18 you're getting argumentative. It's getting late
19 in the afternoon.

20 MR. SCHUMACHER: That was a statement.

21 Q. Mr. Hart, you were authorized to speak
22 on behalf of the company for this application?
23 we talked about that.

24 MR. INGRAM: Objection. Form.

1 A. Yes, for the application.

2 Q. You see on the second page where -- they
3 quote you here, and all I'm asking you is this
4 an accurate quote. Did you tell the reporter,
5 "They want to keep every option open"?

6 A. My whole career I've spoken to reporters
7 since I was in the statehouse. I've have media
8 training, lots of media training. I know that
9 lots of things I've said to reporters were
10 misquoted so I'm not going to agree that I
11 actually said that.

12 Q. That's fine. That's why I'm asking you.
13 So what about the next sentence, do you believe
14 that you told him that because this may lead to
15 legal matters later, but they may also refile
16 and start the process over based on some of the
17 feedback they got at the city council meeting
18 (in December)? Does that sound accurate?

19 A. I'm not going to tell you that I think
20 anything a reporter prints is ever accurate.
21 That -- that sounds like what I would have
22 believed at the time, that, you know, there was
23 no -- there was no -- there was no
24 pre-conclusion going into this that there was

1 going to be legal matters. It was let's see
2 what happens, let's see what we can get. If --
3 if somebody from the city would have come to me
4 or Lifestyles and said, you know, we want to try
5 this again, we'll form a working group of our
6 leadership, we'll sit down with you and hash it
7 out, that's the direction that probably would
8 have happened.

9 Q. Okay.

10 A. But that didn't happen.

11 Q. Right. Right. Because two months later
12 a 230-paragraph federal lawsuit was filed.

13 MR. INGRAM: Objection. Argumentative.

14 Q. You are aware of that, right?

15 MR. INGRAM: Same objection.

16 A. I didn't know how many pages it was.

17 Q. It was long. It wasn't written
18 overnight.

19 A. Well, he works hard.

20 Q. And then at the bottom of that page it
21 says -- you see that last paragraph?

22 A. Hart said?

23 Q. Hart said, yep.

24 A. Yes, I see it.

1 Q. Is that an accurate statement? Did he
2 get it right?

3 A. Again, I'm not going to testify to what
4 I said and what he wrote, but generally speaking
5 that would be the case in any situation like
6 this.

7 Q. All I want to know, Tom, is it -- do you
8 agree that it's likely that you said to him
9 what's in quotes, that the company wants to
10 "keep all options open," including the
11 possibility of a lawsuit?

12 A. I may have said it. I don't recall.

13 Q. And again, I think we talked about this,
14 but I want to be sure. When these comments were
15 made to this reporter on January 26, 2022 or
16 thereabouts, you were not aware that a lawsuit
17 was about to be filed?

18 A. I think that's accurate.

19 MR. SCHUMACHER: Thank you, Tom. I
20 appreciate your time today. That's all the
21 questions I have for you.

22 COURT REPORTER: Read and sign?

23 MR. INGRAM: Yes.

24 COURT REPORTER: would you want this

1 transcribed, Paul?

2 MR. SCHUMACHER: Yes.

3 COURT REPORTER: Is two weeks okay?

4 That would be the 25th.

5 MR. SCHUMACHER: Yeah. Is there any
6 chance of getting it a little bit sooner?

7 COURT REPORTER: Yeah. When would you
8 want it?

9 (Discussion off the record.)

10 (Signature not waived.)

11 --O--

12 Thereupon, the testimony of January
13 11, 2024, was concluded at 2:24 p.m.

14 --O--

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CERTIFICATE

STATE OF OHIO :
SS:
COUNTY OF FRANKLIN :

I, Julia Lamb, RPR, CRR, a
stenographic court reporter and notary public in
and for the State of Ohio, duly commissioned and
qualified, do hereby certify that the
within-named THOMAS L. HART was first duly sworn
to testify to the truth, the whole truth, and
nothing but the truth in the cause aforesaid;
that the testimony then given was taken down by
me stenographically in the presence of said
witness, afterwards transcribed; that the
foregoing is a true and correct transcript of
the testimony; that this deposition was taken at
the time and place in the foregoing caption
specified.

I do further certify that I am not a
relative, employee or attorney of any of the
parties hereto; that I am not a relative or
employee of any attorney or counsel employed by
the parties hereto; that I am not financially
interested in the action; and further, I am not,
nor is the court reporting firm with which I am
affiliated, under contract as defined in Civil
Rule 28(D).

In witness whereof, I have hereunto
set my hand at Columbus, Ohio, on this 23rd day
of January, 2024.

Julia Lamb

Julia Lamb, RPR, CRR
Notary Public, State of Ohio

My commission expires: 10-10-27

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City of Worthington
ARCHITECTURAL REVIEW BOARD
Certificate of Appropriateness
Application

Case # AR 70-2021
Date Received _____
Fee \$ 200 pd _____
Meeting Date 10/14/2021
Filing Deadline 09/24/2021
Receipt # _____

1. Property Location 1033 High Street, Parcel #100-006774; 100-002427; 100-002425
2. Present/Proposed Use S-1 Special; C-2 Community Shopping; C-3 Institutions/Mixed Use
PUD

3. Zoning District S-1, C-3, C-2

4. Applicant _____

Address 230 West Street, Ste. 200, Columbus, OH 43215

Phone Number(s) 614-918-2000

Email _____

5. Property Owner United Methodist Childrens Home

Address 431 E. Broad St., Columbus, OH 43215

Phone Number(s) 614-885-5020

Email _____

6. Project Description modern amenitized mixed use development including single-family homes, owner-occupied townhomes, for rent townhomes and apartments, commercial uses such as office, medical offices, restaurants, work-facilities and outdoor recreation and community spaces connected with paths and sidewalks, multi-story parking facilities and protected natural area

7. Project Details:

a) Design See attached project narratives

b) Color Colors vary but are comparable with existing neighborhood

c) Size 19 SF, 166 townhomes, 540 apartments, 60,000 SF commercial
25,000 SF medical

d) Approximate Cost Estimate pending Expected Completion Date 2 to 4 years from
construction start

PLEASE READ THE FOLLOWING STATEMENT AND SIGN YOUR NAME:

The information contained in this application and in all attachments is true and correct to the best of my knowledge. I further acknowledge that I have familiarized myself with all applicable sections of the Worthington Codified Ordinances and will comply with all applicable regulations.

TH 2/1h
Applicant (Signature)

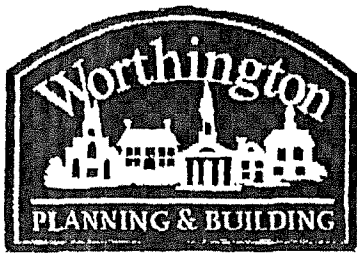
10-02-2020
Date

Guyton La Urr
Property Owner (Signature) Children's Home
Chapman

10-2-2020
Date

**DEPOSITION
EXHIBIT**

Hart 1 11-24



City of Worthington

PLANNED UNIT DEVELOPMENT PRELIMINARY PLAN APPLICATION

Case # PUD 03-2020
Date Received _____
Fee \$1,300 pd
Meeting Date 10/14/2021
Filing Deadline 09/24/2021

1. Property Location 1033 High St; Parcel#100-006774; 100-002427; 100-002425
2. Present Zoning S-1; Special; C-3 Institutions/Offices
~~C-2 Community Shopping Ctr~~ Present Use Institutional Office
3. Proposed Use PUD with Mixed Uses of single family, multi-family, townhouses
apartments, commercial and medical office
4. Applicant _____

Address 230 West St, Ste 200, Columbus, OH 43215

Home Phone N/A Work Phone 614-918-2000

5. Property Owner United Methodist Childrens Home

Address 431 E. Broast St, Columbus, OH 43215

Home Phone N/A Work Phone 614-885-5020

6. Project Description Modern, amenitized mixed use development including

single family homes, owner-occupied townhomes, for rent townhomes and apartments,
commercial uses such as office, medical offices, restaurants, work facilities
and outdoor recreation and community spaces connected with paths and
sidewalks, multi-story parking facilities and protected natural area.

PLEASE READ THE FOLLOWING STATEMENT AND SIGN YOUR NAME:

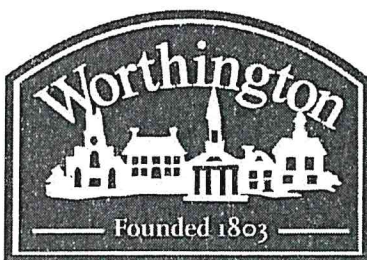
The information contained in this application and in all attachments is true and correct to the best of my knowledge. I further acknowledge that I have familiarized myself with all applicable sections of the Worthington Codified Ordinances and will comply with all applicable regulations.

THJ
Applicant (Signature)

10-02-2020
Date

Cynthia Lee for UMH
Property Owner (Signature) Childrens Home
Champion

10-2-2020
Date



July 15, 2015

Dear Lifestyle Communities,

We, the majority of the Worthington City Council, appreciate the willingness of Lifestyle Communities to present conceptual plans in a recent public meeting on June 29, 2015. Each member of Council was in attendance and heard the comments and reactions from the community.

We remain committed to the principles outlined in the Comprehensive Plan and to the Municipal Planning Commission process. At the same time, we are mindful that Council has been elected to represent the interests of all Worthington citizens and that we must always endeavor to do what is best for the community.

The United Methodist Children's Home site is one of the best opportunities for redevelopment in all of Central Ohio and is vitally important to Worthington. We trust that you also appreciate the significance of this development to all Worthington citizens and will continue to engage in a comprehensive, inclusive community outreach process to listen and respond to the interests of Worthington citizens.

The Comprehensive Plan provides a framework for development. There are numerous ways in which the expressed goals can be interpreted and translated to the site. We understand that your presentation represented an initial concept rather than a formal application or final proposal. Issues raised by the community such as creating abundant green space and parklands, effectively dealing with stormwater, cautiously managing the impact of traffic on adjacent neighborhoods, school capacity, the mix of housing types, amount of residential units and the sizes of buildings are among the many issues you should incorporate into future discussions, studies and conceptual plans.

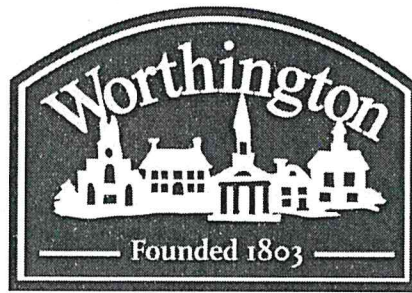
We trust that a proposal for this land that positively shapes the future of our community can be achieved through dialogue with the community, formal and informal neighborhood and community discussions, interaction with City planning personnel and eventually a thorough review by the Municipal Planning Commission.

Sincerely,

Bonnie D. Michael
President, Worthington City Council

**DEPOSITION
EXHIBIT**

Hart3 1-11-24



**City Council Statement Regarding UMCH Development
Adopted Monday, October 12, 2015**

Whereas, the City has had a long established process for reviewing development applications with consideration by the Municipal Planning Commission (MPC);

Whereas, any changes in zoning approved by the MPC must be approved by City Council with additional opportunity for public comment;

Whereas, this process provides notice to the public and an opportunity for the public to review and comment on the application and the MPC has delayed consideration of applications when it considers sufficient input has not been received;

Whereas, this process has successfully helped the City to develop and redevelop areas of the City;

Whereas, this process is being followed in the development of the United Methodist Children's Home and the City encouraged UMCH and its developer to present potential plans to the public for discussion;

Whereas, plans were discussed with neighbors and at a special MPC public meeting;

Whereas, attendees at the meeting had significant opposition to the plan and City Council sent a letter to the developer stating the citizens' comments should be considered;

Whereas, no development plan has been submitted to the City; and,

Whereas, some citizens have indicated that the City Council supports the preliminary plan presented by the developer.

Now let it be known that City Council:

- Has never supported nor does it support the plan presented by UMCH and the developer,
- Supports the proven process, including public input, for considering development issues, and,
- Will only support UMCH redevelopment that enhances the community and meets, in the broadest sense, the objectives of the Comprehensive Plan.

**DEPOSITION
EXHIBIT**

Hart 4 1-11-24

Hart 13 1-11-24

WORTHINGTON

Lifestyle Communities considering next steps on proposal for former UMCH site in Worthington

**Stephen Borgna***ThisWeek*

Published 4:31 p.m. ET Jan. 26, 2022

Lifestyle Communities officials are weighing what to do next regarding the company's plans to redevelop the former United Methodist Children's Home site at 1033 N. High St. in Worthington.

The company's most recent proposal was turned down in December when Worthington City Council rejected a planned-unit-development rezoning request.

Read more: Worthington City Council denies Lifestyle Communities' rezoning request to redevelop former UMCH site

Since 2015, the company has submitted three proposals to rezone and then redevelop the UMCH property into a mixed-use residential and commercial project. To date, each proposal has been scrapped because of poor feedback from city officials and residents or did not receive authorization from city officials, who have cited several concerns with the proposals, including density, green space and the height of several buildings.

Read more: Lifestyle Communities plan draws large, vocal crowd

According to zoning attorney Tom Hart of the Isaac Wiles law firm in Columbus, who is retained by Lifestyle Communities, the company could choose to refile another application to redevelop the site after the failure of its latest proposal in December.

Council member Bonnie Michael previously told *ThisWeek* the company has the option to file another application in the six months after the vote.

In the meantime, Lifestyle Communities is seeking years of city communications related to the redevelopment proposals for the former UMCH property, which the company owns

through its Worthington Campus LLC, according to Hart, who said he is authorized by the company to speak on its behalf.

Lifestyle Communities has filed a public-records request stretching back nine years to Jan. 1, 2013, to determine if the company was treated “fairly” during its proceedings with the city, Hart said.

“They want to keep every option open,” he said. “Because this may lead to legal matters later, but they also may refile and start the process over based on some of the feedback they got at the City Council meeting (in December).”

“One thing a developer has to do in zoning is they have to protect their property rights. They have property rights, they have some development rights and they have a right to be treated fairly. A public-records request like that is just to make sure they are being treated fairly and to make sure there’s no interaction where the deck is stacked against them.”

The city of Worthington was sent a public-records request by the Vorys, Sater, Seymour and Pease LLP law firm in Columbus that sought communications related to the site, Hart said. It was filed on behalf of Lifestyle Communities, he said.

ThisWeek has contacted Vorys, Sater, Seymour and Pease for comment, but the law firm had not responded to the request as of Jan. 26.

Before its most recent rezoning request was rejected by council in December, Lifestyle Communities' proposal received a negative recommendation for PUD approval from the Worthington Municipal Planning Commission in October, despite a request from the company that the meeting serve as a starting point for dialogue and potential amendments to its proposal and not have a vote take place that evening.

Read more: Lifestyle Communities' latest UMCH proposal receives thumbs down from Worthington commission

“That does not happen typically in the 25 or so other jurisdictions I practice in,” Hart said. “We’re concerned about not being treated fairly. We want to see what the communications were internally.”

Hart said if Lifestyle Communities were to find anything in the public records the company perceives as unfair treatment, the company wants to “keep all options open,” including the possibility of a lawsuit.

In an email, Worthington spokesperson Anne Brown said Lifestyle Communities “asked for documents and correspondence between city officials and LC related to the rezoning request of the UMCH property,” but she couldn’t speculate about what the company was seeking.

Meanwhile, City Council on Jan. 18 voted 4-3 to approve a resolution to amend the city's comprehensive plan regarding the former UMCH site. The amendments included several principles that "serve as a guide for future use and development of the site," according to the resolution.

A proposed 12-month moratorium on applications and proposals for the former UMCH site also failed in a 4-3 vote Jan. 18.

Even though a majority voted for the moratorium, it required six out of seven votes to pass, according to council President David Robinson.

The moratorium was an emergency ordinance that would have gone into effect immediately instead of 21 days after the conclusion of the vote, and thus it needed six out of seven votes to pass, according to Michael.

For both measures, Katy Brewer, Pete Bucher, Doug Smith and Robinson voted in favor and Rebecca Hermann, Beth Kowalczyk and Michael voted against.

Robinson said the moratorium would have enabled the "community at-large" and City Council to "reassess what we believe would be most desirable at this property."

"It would in essence give us time and space to think clearly, talk with one another, to explore, to examine and then to articulate our beliefs," Robinson said.

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